THE

ANNUAL PRACTICE.

1900.

BEING A COLLECTION OF THE

STATUTES, ORDERS, AND RU

RELATING TO THE

GENERAL PRACTICE, PROCEDURE, AND JURISDICTION

OF THE

Supreme Court.

WITH NOTES, FORMS, &c.

BY

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IN TWO VOLUMES.

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[Rules of Court include Forms (J. A. 1873, s. 100).]

APPENDIX A.

PART I.

FORMS OF WRITS OF SUMMONS, &c.

No. 1.

General Form of Writ of Summons (O. 2, rr. 3 and 8).

18 . [*Here put the letter and number (See note (a) following this form)*].

In the High Court of Justice.
Division.

Between A.B., Plaintiff,

and

C.D., Defendant.

VICTORIA, by the grace of God, &c.

To C.D. of in the county of

We command you, That within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of A.B. ; and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, ROUNDELL, EARL OF SELBORNE (*see note (b) following this form*), Lord High Chancellor of Great Britain, the day of in the year of Our Lord One thousand eight hundred and

Memorandum to be subscribed on the writ.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar

App. A. Pt. I. Nos. 1, 2.

months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant [*or defendants*] may appear hereto by entering an appearance [*or appearances*] either personally or by solicitor at the Central Office, Royal Courts of Justice, London.

Indorsements to be made on the writ before issue thereof.

The plaintiff's claim is for, &c. (*c*)

This writ was issued by the said plaintiff, who resides at , *or*, this writ was issued by E.F., of , whose address for service is , solicitor for the said plaintiff, who resides at , *or*, this writ was issued by G.H., of , whose address for service is , agent for of , solicitor for the said plaintiff, who resides at [*mention the city, town, or parish, and also the name of the street and number of the house of the plaintiff's residence, if any*] (*d*).

Indorsement to be made on the writ (*e*) *after service thereof.*

This writ was served by me at on the defendant on the day of , 18 .

Indorsed the day of , 18 .

(Signed)

(Address)

Notes (*a*) If the action is for administration the writ must be headed "In the matter of the Estate of , deceased." If it is a debenture holders' action the writ must be headed in the matter of the company (See O. 2, r. 3 (n.).

(*b*) Now Hardinge Stanley, Earl of Halsbury. Where the name of the Lord Chancellor was accidentally omitted and was afterwards inserted by amendment, the Court held that the writ was good though the Statute of Limitations had intervened between the issue and amendment of the writ (*McNay* v. *Att*, 66 L. T. 832).

(*c*) If the claim is for a debt or liquidated demand only the indorsement, even though not special, must include a claim for four-day costs as in App. A., Pt. III., s. 3, *infra*. See O. 3, r. 7, and note.

(*d*) The address for service must be within three miles from the principal entrance to the Central Hall of the Royal Courts of Justice (O. 4, r. 1).

(*e*) Within three days (see O. 9, r. 15).

Writs of Summons generally.—See note to O. 2, r. 1.

Requirements before Issue.—See Practice note to O. 5, r. 2.

Appearances in London are entered in the Central Office (O. 12, r. 2); and as to appearance in a district registry, see O. 12, rr. 4, 5; and form 3, *infra*.

Address of Defendant.—The omission of, invalidates writ. (*The W. A. Scholten*, 13 P. D. 8; but see (n.) "Defendant's address not known," O. 2, r. 4.)

No. 2.

Specially Indorsed Writ, Order III., Rule 6 (O. 2, r. 3).

[*Title as in No.* 1.]

VICTORIA, by the grace of God, &c., to of in the of .

We command you, &c. [*as in Form No.* 1, *supra.*]

Witness, &c. [*as in Form No.* 1, *supra.*]

N.B.—This writ is to be served, &c. [*as in Form No.* 1, *supra.*]

Appearance is to be entered at the Central Office, Royal Courts of Justice, London.

Statement of Claim (a) :—

The plaintiff's claim is .

Particulars :—

Place of trial .

(Signed)

And the sum of £ (*b*) [*or* such sum as may be allowed on taxation], for costs. If the amount claimed is paid to the plaintiff or h solicitor or agent within four days from the service hereof, further proceedings will be stayed.

This writ was issued, &c. [*as in Form No.* 1, *supra.*]

This writ was served by me at on the defendant on the day of , 18 .
Indorsed the day of , 18 .
(Signed)
(Address)

Notes (*a*) For forms see App. C., Sec. IV., *post.*
(*b*) For regulations as to the amount to be filled in for these costs, see O. 3, r. 7 (n.) "Amount to be Indorsed for Costs," *ante*, Vol. I.
Case under corresponding Irish Form.—As to necessity for the heading "Statement of Claim," and the addition of the signature at the foot, see *Cassidy & Co.* v. *M'Aloon*, 32 L. R. Ir. 368, cited O. 3, r. 6, (n.) "Practice," &c.

No. 3.

Writ for issue from District-Registry (O. 2, r. 3; O. 4-r. 3; O. 5, rr. 3, 4.)

18 . [*Here put the letter and number* (*See Form* 1, (n.) (*a*).]

In the High Court of Justice.
Division.

(MANCHESTER) DISTRICT REGISTRY.

Between, &c. [*as in No.* 1, *supra.*]

VICTORIA, by the grace of God, &c., to of in the of .

We command you, &c. [*as in Form No.* 1, *supra.*]
Witness, &c.

N.B.—This writ is to be served, &c. [*as in Form No.* 1, *supra.*]

A defendant who resides or carries on business within the above-named district must enter appearance at the office of the registrar of that district.*

* Insert address of office.

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

The plaintiff's claim is (*a*)
This writ, &c.

(N.B.—*The address for service must be within the district.*)

This writ was served, &c.

Note (*a*). See note (*c*) to Form No. 1, *supra.*

App. A.
Pt. I.
Nos. 4, 5.

No. 4.

Specially Indorsed Writ for issue from District Registry (O. 2, r. 3; O. 3, r. 6).

[*Title, &c., as in No.* 3.]

VICTORIA, by the grace of God, &c.
We command you, &c.

Witness, &c.

N.B.—This writ is to be served, &c.

A defendant who resides, &c. [*as in Form* 3, *supra.*]
A defendant who neither resides, &c. [*as in Form* 3, *supra.*]

Statement of Claim :—

The plaintiff's claim is

Particulars :—

[*As in Form No.* 2, *supra.*]

This writ, &c.

(N.B.—*The address for service must be within the district.*)

This writ was served, &c.

[*Note.*—See No. 2, *supra* (n.)]

No. 5.

Writ for Service out of the Jurisdiction, or where Notice in lieu of Service is to be given out of the Jurisdiction (O. 2, r. 5).

[*Title, &c., as in No.* 1.]

VICTORIA, by the grace of God, &c.
To C.D., of

We command you, C.D., That within [*here insert the number of days directed by the court or judge ordering the service or notice*] after the service of this writ [*or notice of this writ, as the case may be*] on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Division of our High Court of Justice in an action at the suit of A.B.; and take notice, that in default of your so

doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, &c.

Memoranda and Indorsement as in Form No. 1.

Indorsement to be made on the writ before the issue thereof.

N.B.—This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is not in British dominions, notice of the writ, and not the writ itself, is to be served upon him.

[*Note* Ed.—The above indorsement "N.B." must also be added to a writ if it is amended by adding a defendant who is to be served out of the jurisdiction; see *Keate* v. *Phillips*, W. N. (78) 186; though the Court has power to waive the irregularity in a proper case (*Dickson* v. *Law* (1895) 2 Ch. 62). The indorsement "N.B." need not be made on a writ against defendants domiciled abroad, but whom it is intended to serve within the jurisdiction, see *Pollexfen* v. *Sibson*, 16 Q. B. D. 792. See *Sedgwick* v. *Yedras Mining Co.*, Form 6, *infra* (n.)]

No. 6.

Specially Indorsed Writ for Service out of the Jurisdiction (O. 2, r. 5).

[*Heading, as in No.* 1.]

VICTORIA, by the grace of God, &c., to , of , in the of .

We command you, That within * days after service † of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of . And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, &c.

* Insert No. of days directed by court or judge.

† If notice of the writ is to be served, insert here, "of notice."

N.B.—This writ is to be served, &c. [*as in Form No.* 1, *supra.*]

Appearance is to be entered at the Central Office, Royal Courts of Justice, London.

Statement of Claim :—

The plaintiff's claim is .

Particulars :—

Place of trial .

(Signed)

And £ [*or* such sum as may be allowed on taxation] for costs. If the amount claimed is paid to the plaintiff or his solicitor or agent within * days from service † hereof, further proceedings will be stayed.

* Insert No. of days limited for appearance.

This writ was issued, &c. [*see Form* 1, *supra.*]

This writ [*or* notice of this writ] was served, &c.

† If notice to be served, insert here, "of notice."

N.B.—This writ is to be used, &c. [*as in Form No.* 5, *supra.*]

[A writ issued against a foreign company having no office in the United Kingdom must be in Form No. 5 or No. 6. A writ issued in Form No. 2 was set aside. (*Sedgwick* v. *Yedras Mining Co.*, 35 W. R. 780.)]

App. A. Pt. I. Nos. 7—9.

No. 7.

Writ from District Registry for Service out of the Jurisdiction (O. 2, r. 5).

[*Heading, as in Form* 3.]

VICTORIA, by the grace of God, &c., to , of
We command you, &c. [*as in last Form.*]
Witness, &c.

N.B.—This writ is to be served, &c. [*as in Form No.* 1, *supra.*]
A defendant who resides, &c. [*as in Form* 3, *supra.*]
A defendant who neither resides, &c. [*as in Form* 3, *supra.*]
The plaintiff's claim is

This writ was issued by, &c.

(N.B.—*The address for service must be within the jurisdiction.*)

This writ [*or* notice of this writ] was served, &c.

N.B.—This writ is to be used, &c. [*as in Form* 5, *supra.*]

No. 8.

Specially Indorsed Writ from District Registry for Service out of the Jurisdiction (O. 2, r. 5).

[*Heading, as in Form* 3.]

VICTORIA, by the grace of God, &c.
We command you, &c. [*as in Form* 5, *supra.*]
Witness, &c.

N.B.—This writ is to be served, &c. [*as in Form* 5, *supra.*]

A defendant who resides, &c. [*as in Form* 3.]
A defendant who neither resides, &c. [*as in Form* 3.]

Statement of Claim and Particulars as in Form 6, *supra.*

This writ was issued by, &c.

(N.B.—*The address for service must be within the district.*)

This writ [*or* notice of this writ] was served, &c.

N.B.—This writ is to be used, &c. [*as in Form* 5, *supra.*]

No. 9.

Notice of Writ in lieu of Service to be given out of the Jurisdiction (O. 2, r. 5).

[*Title, &c., as in No.* 1.]

To G.H., of
Take notice, that A.B., of , has commenced an action against you, G.H., in the Division of Her Majesty's High Court of Justice

in England, by writ of that court, dated the day of , A.D. 18 ; which writ is indorsed as follows [*copy in full the indorsements*], and you are required within days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said court to the said action; and in default of your so doing, the said A.B. may proceed therein, and judgment may be given in your absence.

You may appear to the said writ by entering an appearance personally or by your solicitor at the Central Office, Royal Courts of Justice, London.

(Signed) A.B. of &c.
or X.Y. of &c.
Solicitor for A.B.

In the High Court of Justice.
Division.

[*Note.*—This notice is to be used in all cases where the person to be served is not a British subject, and is not in British dominions: see *Padley* v. *Camphausen*, 10 C. D. 550. It is not necessary to indorse on the notice a copy of the order giving leave to serve it, nor need any notice be given of such order; see *Reynolds* v. *Coleman*, 36 C. D. 453.]

No. 10.

Notice of Writ in lieu of Service to be given out of the Jurisdiction (O. 2, r. 5).

(DISTRICT REGISTRY FORM.)

[*Title as in No.* 3.]

To , of .

Take notice, that , of , has commenced an action against you in the Division of Her Majesty's High Court of Justice in England, by writ of that court, dated the day of , 18 , which writ is indorsed as follows:—

And you are hereby required within days after the receipt of this notice, inclusive of the day of such receipt, to defend this action by causing an appearance to be entered for you thereto, and in default of your so doing the said may proceed therein, and judgment may be given in your absence.

If you reside or carry on business within the above-named district, appearance is to be entered at the office of the registrar for that district.*

If you do not either reside or carry on business within that district, appearance is to be entered either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

* Insert address of office.

(Signed)

This notice was served by, &c.

N.B.—This notice is to be used where the person to be served is not a British subject, and is not in British dominions.

[See note to preceding form.]

App. A. Pt. I. Nos. 11, 12.

No. 11.

Writ of Summons in Admiralty Action in rem (O. 2, r. 7).

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Probate, Divorce and Admiralty Division.
Between A.B., Plaintiff,
and
The owners of the

VICTORIA, by the grace of God, &c.
To the owners and parties interested in the ship or vessel of the port of [*or* cargo, *&c., as the case may be*].
We command you, that within eight days after the service of this writ, inclusive of the day of such service, you do cause an appearance to be entered for you in the Probate, Divorce and Admiralty Division of our High Court of Justice in an action at the suit of A.B.: and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.
Witness, &c.

Memorandum to be subscribed on the writ.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant [*or* defendants] may appear hereto by entering an appearance [*or* appearances] either personally or by solicitor at the Central Office, Royal Courts of Justice, London.

Indorsements to be made on the writ before issue thereof.

The plaintiff's claim is for, &c.
This writ was issued by, &c.

Indorsement to be made on the writ after service thereof.

This writ was served by X.Y. [*here state the mode in which the service was effected, whether on the ship, cargo, or freight, according to Order IX., Rules* 11, 12, 13, *and* 14, *as the case may be*] on the day of , 18 .

(Signed) X.Y.

No. 12.

Writ in Admiralty Actions for Issue from District Registry (O. 2, r. 7).

18 . [*Here put letter and number.*]

In the High Court of Justice.
Division.

(MANCHESTER) DISTRICT REGISTRY.

Between Plaintiff,
and
The owners of the Defendants.

VICTORIA, by the grace of God, &c., to the owners and parties interested in the ship or vessel of the port of and

We command you, &c. [*as in Form* 1, *supra*].
Witness, &c.

N.B.—This writ is to be served, &c. [*as in Form* 1, *supra*].
A defendant who resides, &c. [*as in Form* 3, *supra*].
A defendant who neither resides, &c. [*as in Form* 3, *supra*].

The plaintiff's claim is for
This was issued by, &c.

(N.B.—*The address for service must be within the district.*)

This writ was served by me * on the day of * State mode of service.
, 18 .
Indorsed the day of , 18 .
(Signed)
(Address)

No. 13.

Affidavit to lead Warrant in a Cause of Restraint (O. 5, r. 16).

[*Heading as in Form* 11.]

I, A.B., make oath and say as follows :—

1. I am the lawful owner of [*state number*] sixty-fourth shares of the or vessel belonging to the port of ; and the value of my said shares amounts to the sum of pounds or thereabouts.

2. The said vessel is now lying at , and is in the possession or under the control of , the owner of [*state number*] sixty-fourth shares thereof, and is about to be despatched by him on a voyage to against my consent.

3. I am desirous that the said vessel be restrained from proceeding to sea, until security be given to the extent of my interest therein for her safe return to the said port of [*the port to which the vessel belongs*], and the aid and process of the High Court of Justice are necessary in that behalf.

Sworn, &c.

No. 14.

Affidavit to lead Warrant in a Cause of Possession (O. 5, r. 16).

[*Heading as in Form* 11.]

I, A.B., make oath and say as follows :—

1. I am the lawful owner of [*state number*] sixty-fourth shares of the or vessel , belonging to the port of .

2. The said vessel is now lying at , and is in the possession or under the control of [*state name, address, and description of the person retaining possession, and state whether he is the master or part owner, and, if owner, of how many shares*] ; and the said refuses to

App. A. Pt. I. Nos. 14—17.

deliver up the same to me; [and the certificate of registry of the said vessel is also unlawfully withheld from me by the said , who is in possession thereof].

3. The aid and process of the High Court of Justice are necessary to enable me to obtain possession of the said vessel [and of the certificate of registry].

Sworn, &c., before me, C.D., &c.

No. 15.

Præcipe for Warrant (O. 9, r. 11).

[*Heading as in Form* 11.]

I, A.B., solicitor for the plaintiff, pray a warrant to arrest [*state name and nature of property*].

Dated the day of , 18 .

[*To be signed by the solicitor, or by his clerk for him.*]

No. 16.

Præcipe for Service by the Marshal of any Instrument in rem other than a Warrant (O. 9, r. 11).

[*Heading as in Form* 11.]

I, A.B., solicitor for the [*state whether plaintiff or defendant*], pray that the [*state nature of instrument*] left herewith be duly executed.

Dated the day of , 18 .

[*To be signed by the solicitor, or by his clerk for him.*]

No. 17.

Warrant of Arrest in Admiralty Action in rem (O. 5, r. 16).

[*Heading as in Form* 11.]

VICTORIA, by the grace of God, &c.

To the Marshal of the Probate, Divorce, and Admiralty Division of Our High Court of Justice, and to all and singular his substitutes [*or* To the Collector or Collectors of Customs at the Port of]. We hereby command you to arrest the ship or vessel of the port of [*and the cargo and freight, &c., as the case may be*], and to keep the same under safe arrest, until you shall receive further orders from Us.

Witness, &c.

App. A. Pt. I. Nos. 18, 19.

No. 18.

Form of Memorandum for Renewed Writ (O. 8, r. 1)

[*Heading as in Form* 1.]

Seal renewed writ of summons in this action indorsed as follows :—

[*Copy original writ and the indorsements.*]

No. 19.

Certificate of Solicitor as to Assignment of Cause or Matter (O. 5, r. 9 (e)).

[*Heading as in Form* 1.]

I, A.B., solicitor for the above-named hereby certify that the writ [summons *or* petition] annexed hereto relates to the administration of the same trust [*or* the winding up of the same Company], as or is so connected with the cause or matter entitled [*insert title*] and assigned to the Hon. Mr. Justice , as to be conveniently dealt with by the same Judge.

[To be countersigned by the chief clerk of the judge to whom the action is to be thereby assigned, see O. 5, r. 9 (e).]

PART II.

FORMS OF ENTRY OF APPEARANCE, AND OF BAIL AND RELEASES IN ADMIRALTY ACTIONS.

Pt. II. No. 1.

No. 1.

Memorandum of Appearance in General (O. 12, rr. 8, 13).

In the High Court of Justice.
Division. 18 . No.
Between , Plaintiff,
and
, Defendant.

Enter an appearance for in this action
Dated the day of , 18 .
(Signed)
Agent for , of*
, of

[*Note.*—For Practice requirements on entering, see O. 12, r. 1, and note, and see Forms Nos. 4 to 7, *infra.*]

* If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

App. A. Pt. II. Nos. 2—4.

No. 2.

Notice of Entry of Appearance (O. 12, r. 9).

[*Heading as in Form* 1.]

Take notice, that I have this day entered an appearance at the Central Office, Royal Courts of Justice [*or* at the office of the registrar of the District Registry] for the defendant to the writ of summons in this action.

[*If statement of claim is required, add*] The said defendant requires delivery of a statement of claim.

Dated the day of , 18 .

(Signed) , of
Agent for
Solicitor for the defendant.

To

[*As to requiring delivery of a statement of claim, see* O. 20, Vol. I.]

No. 3.

Notice limiting Defence (O. 12, r. 29).

[*Heading as in Form* 1.]

Take notice that the [*above-named*] defendant [*A.B.*] limits his defence to part only of the property mentioned in the writ of summons, namely, to the close, called "The Big Field."

Dated the day of , 18 .

(Signed) , of
Agent for , of
Solicitors for the above-named defendant.

To Messrs. , the plaintiff's solicitors.

No. 4.

Entry of Appearance limiting Defence (O. 12, r. 28).

[*Heading as in Form* 1.]

Enter an appearance for the defendant in this action. The said defendant limits his defence to part only of the property mentioned in the writ of summons, namely, to the close called "The Big Field."

The address of is

Dated the day of 18 .

(Signed) , of*
Agent for , of

* If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

[*Note.*—Any person appearing to defend as landlord must so state in his appearance, O. 12, r. 26; and if he is not named as a defendant the date of the order giving him leave to defend must be added, O. 12, r. 25.]

No. 5.

Entry of Appearance, Order XVI., Rule 49.

[*Heading as in Form* 1.]

Enter an appearance for to the notice issued in this action on the day of , 18 , by the defendant under the Rules of the Supreme Court, 1883, Order XVI., Rule 49.

Dated the day of , 18 .

(Signed) , of*

Agent for , of

* If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

No. 6.

Entry of Appearance, Order XVII., Rule 5.

[*Heading as in Form* 1.]

Enter an appearance for , who has been served with an order dated the day of to carry on and prosecute the proceedings in this action.

Dated the day of , 18 .

(Signed) , of*

Agent for , of

* If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

No. 7.

Entry of Appearance to Counterclaim (O. 21, r. 13).

[*Heading as in Form* 1.]

Enter an appearance for to the counterclaim of the above-named defendant in this action.

Dated the day of , 18 .

(Signed) , of*

Agent for , of

* If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

[*Note.*—The heading should contain the double title of claim and counterclaim.]

No. 8.

Affidavit for Entry of Appearance as Guardian (O. 16, r. 18).

[*Heading as in Form* 1.]

I, of , make oath and say as follows:—

A.B., of , is a fit and proper person to act as guardian *ad litem* of the above-named infant defendant, and has no interest in the matters in question in this action [matter] adverse to that of the said infant, and the consent of the said A.B. to act as such guardian is hereto annexed.

Sworn, &c.

[*To this Affidavit shall be annexed the document signed by such guardian in testimony of his consent to act.*]

ALTERNATIVE FORM OF AFFIDAVIT.

[*To meet cases where a positive oath as to fitness cannot reasonably be insisted upon, the following form is accepted.*]

I, of , the solicitor for C.D. (*the infant*), make oath and say as follows:—

1. I am informed and verily believe that A.B., of , is a fit and proper person to act as guardian of the above-named infant defendant, and the consent of the said A.B. to act as such guardian is hereto annexed.

2. The said A.B. has no interest in the matters in question in this action [matter] adverse to that of the said infant.

Sworn, &c.

[*Note.*—This form is no part of the Appendix to the Rules.]

App. A. Pt. II. Nos. 8—11.

Usual Form of Consent.

(*Note.—This form is not part of the Appendix to the Rules.*)

I, A.B., of [*address and addition*] consent to act as guardian *ad litem* for C.D., an infant defendant in this action, and I authorise Mr. , of , to defend this action [*signature of guardian*].

No. 9.

Præcipe for Notice of Bail.

18 . [*Here put the letter and number.*]

In the High Court of Justice.

Probate, Divorce and Admiralty Division.

Between A.B., Plaintiff.

and

the Owners of the

I, A.B., solicitor for the [*state whether plaintiff or defendant*], tender the under-mentioned persons as bail on behalf of [*state the name, address, and description of the party for whom bail is to be given*], in the sum of £ to answer judgment in this action [*if for costs add*, so far as regards costs].

Names, Addresses, and Descriptions of Sureties.	Referees.
1.	
2.	

Dated the day of , 18 .

[*To be signed by the solicitor or by his clerk for him.*]

[*The names of bankers should if possible be given as referees.*]

No. 10.

Notice of Bail.

[*Heading as in Form* 9.]

Take notice that A.B., solicitor for the [*state whether plaintiff or defendant*], tenders the under-mentioned persons as bail on behalf of [*state name, address, and description of the party for whom bail is to be given*], in the sum of £ to answer judgment in this action [*if for costs add*, so far as regards costs].

Names, Addresses, and Descriptions of Sureties.	Referees.
1.	
2.	

Dated the day of , 18 .

G.H., Marshal.

No. 11.

Marshal's Report as to the Sufficiency of proposed Bail.

[*Heading as in Form* 9.]

I hereby report that I have made diligent inquiry and certified myself that [*state names, addresses, and descriptions of the two sureties*] the

proposed bail on behalf of [*state name, address, and description of the party for whom bail is to be given*] to answer judgment in this action [*if for costs add*, so far as regards costs] are respectively sufficient sureties for the sum of £ [*state the sum in letters*] pounds.

Dated the day of , 18 .

G.H., Marshal.

No. 12.

Præcipe for Bail Bond.

[*Heading as in Form* 9.]

I, A.B., solicitor for the [*state whether plaintiff or defendant*], pray a bail bond for a signature of the sureties named in the annexed notice of bail and report of the marshal.

Dated the day of , 18 .

[*To be signed by the solicitor, or by his clerk for him.*]

No. 13.

Bail Bond (O. 29, r. 6).

[*Heading as in Form* 9.]

Whereas an action of has been commenced in the High Court of Justice on behalf of against [and against intervening]. Now, therefore, we and hereby jointly and severally submit ourselves to the jurisdiction of the said Court, and consent that, if he the said shall not pay what may be adjudged against him in the said action with costs, execution may issue forth against us, our heirs, executors, and administrators, goods and chattels, for a sum not exceeding £ .

[*Signatures of sureties.*]

This bail bond was signed by the said and the sureties, the day of , 18 .

Before me,

[*To be signed before the Registrar, or one of the clerks in the Registry, or before a Commissioner for Oaths.*]

[*Note.*—This is not a proper form to be used in actions of restraint ("*The Robert Dickenson*," 33 W. R. 400).]

No. 14.

Affidavit of Justification.

[*Heading as in Form* 9.]

I [*state name, address, and description*], one of the proposed sureties for [*state name, address, and description of the person for whom bail is to be given*], make oath and say, that I am worth more than the sum of [*state the sum in letters in which bail is to be given*] pounds after the payment of all my debts.

Sworn, &c.

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Pt. II.
Nos. 15—18.

No. 15.

Præcipe for Release.

[*Heading as in Form* 9.]

I, A.B., solicitor for the [*state whether plaintiff or defendant*] in an action [*state nature of action*], commenced on behalf of against the [*state name and nature of property*], now under arrest by virtue of a warrant issued from the Registry of this Division, pray a release of the said [bail having been given, *or* the action having been withdrawn by me before an appearance was entered therein, &c., *as the case may be*], and there being no caveat against the release thereof outstanding.

Dated the day of , 18 .

[*To be signed by the solicitor, or by his clerk for him.*]

No. 16.

Release (O. 29, r. 1).

In the High Court of Justice.
Probate, Divorce and Admiralty Division.

VICTORIA, by the Grace of God, &c. To the Marshal of the Probate, Divorce and Admiralty Division of our High Court of Justice and to all and singular his substitutes, greeting. Whereas in an action of commenced in our said High Court on behalf of against , we did command you to arrest the said and to keep the same under safe arrest until you should receive further orders from us. Now we do hereby command you to release the said from the arrest effected by virtue of our warrant in the said action, upon payment being made to you of all costs, charges, and expenses attending the care and custody of the property whilst under arrest in that action.

Witness, &c. (Seal.)

Release
Taken out by .

No. 17.

Præcipe for Caveat Release (O. 29, r. 8).

[*Heading as in Form* 9.]

I, A.B., solicitor for the plaintiff in an action [*state nature of cause*] commenced on behalf of [*state name, address, and description of plaintiff*], against [*state name and nature of property*], pray a caveat against the release of the said [*state name and nature of property*].

Dated the day of , 18 .

[*To be signed by the solicitor, or by his clerk for him.*]

No. 18.

Præcipe for Caveat Warrant (O. 29, r. 12).

[*Heading as in Form* 9.]

I [*state name, address, and description*], hereby undertake to enter an appearance in any action that may be commenced in the High Court of

Justice against [*state name and nature of the property*], and within three days after I shall have been served with a notice of the commencement of any such action to give bail therein in a sum not exceeding [*state amount for which the undertaking is given*] pounds, or to pay such sum into the Admiralty Registry. And I consent that all instruments and other documents in such action may be left for me at .

Dated the day of , 18 .

[*To be signed by the party, or by his solicitor.*]

No. 19.

Præcipe to withdraw Caveat.

[*Heading as in Form* 9.]

I, A.B., solicitor for the [*state whether plaintiff or defendant*], pray that the caveat against [*state tenor of caveat*], entered by me on the day of , 18 , on behalf of [*state name*] may be withdrawn.

Dated the day of , 18 .

[*To be signed by the person by whom the præcipe for the entry of the caveat was signed.*]

PART III.

General Indorsements on Writs of Summons (O. 3, r. 3).

SECTION I.

In Matters assigned by the 34th Section of the Act to the Chancery Division.

1. *Creditor to administer Estate.*

The plaintiff's claim is as a creditor of X.Y. of , deceased, to have the [real and] personal estate of the said X.Y. administered. The defendant C.D. is sued as the administrator [*or, as the executor*] of the said X.Y. [and the defendants E.F. and G.H. as his co-heirs-at-law] [*or, as the devisees of his real estate*].

[*Note.*—The words in italics within brackets are no part of the Appendix to the Rules. As to creditor suing on behalf of himself and others, see note "Creditors' action" under O. 3, r. 4.]

2. *Legatee to administer Estate.*

The plaintiff's claim is as a legatee under the will dated the day of , 18 , of X.Y., deceased, to have the [real and] personal estate of the said X.Y. administered. The defendant C.D. is sued as the executor of the said X.Y. [and the defendants E.F. and G.H. as his devisees].

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3. *Partnership.*

The plaintiff's claim is to have an account taken of the partnership dealings between the plaintiff and defendant [under articles of partnership dated the day of], and to have the affairs of the partnership wound up.

4. *By Mortgagee.*

The plaintiff's claim is to have an account taken of what is due to him for principal, interest, and costs on a mortgage dated the day of , made between [*or by deposit of title deeds*], and that the mortgage may be enforced by foreclosure or sale.

5. *By Mortgagor.*

The plaintiff's claim is to have an account taken of what, if anything is due on a mortgage dated , and made between [*parties*], and to redeem the property comprised therein.

[5A. *By person entitled to redeem.* (*Conveyancing Act*, 1881, s. 25.)

The plaintiff's claim is as a person entitled to redeem to have an account taken of what is due on an indenture of mortgage made to the defendant, dated the day of , and to have the property comprised in the said mortgage sold by the Court (*Wolstenholme & Turner, p.* 213, 1*st ed.*).]

[*Note.*—The above form is no part of the Appendix to the Rules.]

6. *Raising Portions.*

The plaintiff's claim is that the sum of £ , which by an indenture of settlement, dated , was provided for the portions of the younger children of , may be raised.

7. *Execution of Trusts.*

The plaintiff's claim is to have the trusts of an indenture, dated and made between , carried into execution.

8. *Cancellation or Rectification.*

The plaintiff's claim is to have a deed, dated , and made between [*parties*], set aside or rectified.

9. *Specific Performance.*

The plaintiff's claim is for specific performance of an agreement, dated the day of , for the sale by the plaintiff to the defendant of certain [*freehold*] hereditaments at .

Sec. II.

SECTION II.

Money Claims where no Special Indorsement under Order III., Rule 6.

Goods sold.

The plaintiff's claim is *l.* for the price of goods sold.

[*This Form shall suffice whether the claim be in respect of goods sold and delivered, or of goods bargained and sold.*]

Money lent.

The plaintiff's claim is *l.* for money lent [*and* interest].

The plaintiff's claim is *l.*, whereof *l.* is for the price of goods sold, and *l.* for money lent, and *l.* for interest.	Several demands.
The plaintiff's claim is *l.* for arrears of rent.	Rent.
The plaintiff's claim is *l.* for arrears of salary as a clerk [*or as the case may be*].	Salary, &c.
The plaintiff's claim is *l.* for interest upon money lent.	Interest.
The plaintiff's claim is *l.* for a general average contribution.	General average.
The plaintiff's claim is *l.* for freight and demurrage.	Freight, &c.
The plaintiff's claim is *l.* for lighterage.	
The plaintiff's claim is *l.* for market tolls and stallage.	Tolls.
The plaintiff's claim is *l.* for penalties under the Statute.	Penalties.
The plaintiff's claim is *l.* for money deposited with the defendant as a banker.	Banker's balance.
The plaintiff's claim is *l.* for fees for work done [*and* *l.* money expended] as a solicitor.	Fees, &c., as solicitors.
The plaintiff's claim is *l.* for commission earned as [*state character as auctioneer, cotton-broker, &c.*]	Commission.
The plaintiff's claim is *l.* for medical attendances.	Medical attendance, &c.
The plaintiff's claim is *l.* for a return of premiums paid upon policies of insurance.	Return of premium.
The plaintiff's claim is *l.* for the warehousing of goods.	Warehouse rent.
The plaintiff's claim is *l.* for the carriage of goods by railway.	Carriage of goods.
The plaintiff's claim is *l.* for the use and occupation of a house.	Use and occupation of houses.
The plaintiff's claim is *l.* for the hire of [furniture].	Hire of goods.
The plaintiff's claim is *l.* for work done as a surveyor.	Work done.
The plaintiff's claim is *l.* for board and lodging.	Board and lodging.
The plaintiff's claim is *l.* for the board, lodging, and tuition of X.Y.	Schooling.
The plaintiff's claim is *l.* for money received by the defendant as solicitor [*or* factor, *or* collector, *or*, &c.] of the plaintiff.	Money received.
The plaintiff's claim is *l.* for fees received by the defendant under colour of the office of	Fees of office.
The plaintiff's claim is *l.* for a return of money overcharged for the carriage of goods by railway.	Money overpaid.
The plaintiff's claim is *l.* for a return of fees overcharged by the defendant as	
The plaintiff's claim is *l.* for a return of money deposited with the defendant as stakeholder.	Return of money by stakeholder.

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Money won from stakeholder.	The plaintiff's claim is as stakeholder, and payable to plaintiff.	*l.* for money entrusted to the defendant
Money entrusted to agent.	The plaintiff's claim is defendant as agent of the plaintiff.	*l.* for a return of money entrusted to the
Money obtained by fraud.	The plaintiff's claim is the plaintiff by fraud.	*l.* for a return of money obtained from
Money paid by mistake.	The plaintiff's claim is defendant by mistake.	*l.* for a return of money paid to the
Money paid for consideration which has failed.	The plaintiff's claim is defendant for [work to be done, left undone; *or*, a bill to be taken up; not taken up, *or*, &c.].	*l.* for a return of money paid to the
Money paid by surety for defendant.	The plaintiff's claim is deposit upon shares to be allotted.	*l.* for a return of money paid as a
Rent paid.	The plaintiff's claim is his surety.	*l.* for money paid for the defendant as
Money paid on accommodation bill.	The plaintiff's claim is defendant.	*l.* for money paid for rent due by the
Contribution by surety.	The plaintiff's claim is indorsed] for the defendant's accommodation.	*l.* upon a bill of exchange accepted [*or*
By co-debtor.	The plaintiff's claim is paid by the plaintiff as surety.	*l.* for a contribution in respect of money
Money paid for calls.	The plaintiff's claim is debt of the plaintiff and the defendant paid by the plaintiff.	*l.* for a contribution in respect of a joint
Money payable under award.	The plaintiff's claim is against which the defendant was bound to indemnify the plaintiff.	*l.* for money paid for calls upon shares,
Life policy.	The plaintiff's claim is	*l.* for money payable under an award.
Money bond.	The plaintiff's claim is life of X.Y., deceased.	*l.* upon a policy of insurance upon the
Foreign judgment.	The plaintiff's claim is 1000*l.*, and interest.	*l.* upon a bond to secure a payment of
Bills of exchange, &c.	The plaintiff's claim is Court, in the Empire of Russia.	*l.* upon a judgment of the
	The plaintiff's claim is dant.	*l.* upon a cheque drawn by the defen-
	The plaintiff's claim is drawn, *or* indorsed] by the defendant.	*l.* upon a bill of exchange accepted [*or*
	The plaintiff's claim is indorsed] by the defendant.	*l.* upon a promissory note made [*or*
	The plaintiff's claim is tor, and against the defendant C.D. as drawer [*or* indorser] of a bill of exchange.	*l.* against the defendant A.B. as accep-
Surety.	The plaintiff's claim is the price of goods sold.	*l.* against the defendant as surety for
	The plaintiff's claim is	*l.* against the defendant A.B. as prin-

cipal, and against the defendant C.D. as surety, for the price of goods sold [*or* arrears of rent, *or* for money lent, *or* for money received by the defendant A.B. as traveller for the plaintiffs, *or*, &c.].

The plaintiff's claim is *l.* against the defendant as a *del credere* agent for the price of goods sold [*or* as losses under a policy]. — Del credere agent.

The plaintiff's claim is *l.* for calls upon shares. — Calls.

The plaintiff's claim is *l.* for crops, tillage, manure [*or as the case may be*], left by the defendant as outgoing tenant of a farm. — Waygoing crops, &c.

[*Note.*—The word "defendant" in the last claim is evidently a mistake for "plaintiff." The outgoing tenant would be the person to claim payment for waygoing crops.]

SECTION III. — Sec. III.

Indorsement for Costs (O. 3, r. 7).

Add to the above forms:—

And *l.* for costs; and if the amount claimed be paid to the plaintiff or his solicitor within four days [*or if the writ is to be served out of the jurisdiction, or notice in lieu of service allowed, insert the time for appearances limited by the rules*] from the service hereof, further proceedings will be stayed.

[*Note.*—The form of the corresponding indorsement for costs on a specially indorsed writ (Pt. I. No. 2, *supra*) contains the words "or agent" after the word "solicitor."

For regulations as to the amount to be filled in for these costs, see O. 3, r. 7 (*n.*), "Practice under this Rule," *ante*, Vol. I.]

SECTION IV. — Sec. IV.

Damages and other Claims.

The plaintiff's claim that an account be taken of [*say what*]. — Account.

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller. — Agent, &c.

The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller [and *l.* for arrears of wages].

The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.

The plaintiff's claim is for damages for breach of duty as factor [*or, &c.*] of the plaintiff [and *l.* for money received as factor, *&c.*].

The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of X.Y. to the defendant [*or plaintiff*]. — Apprentices.

The plaintiff's claim is for damages for non-compliance with the award of X.Y. — Arbitration.

The plaintiff's claim is for damages for assault and false imprisonment [and for malicious prosecution]. — Assault.

The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff C.D.

The plaintiff's claim is for damages for injury by the defendant's negligence as solicitor of the plaintiff. — Solicitor.

The plaintiff's claim is for damages for negligence in the custody of goods [and for wrongfully detaining the same]. — Bailment.

The plaintiff's claim is for damages for negligence in the keeping of goods pawned [and for wrongfully detaining the same]. — Pledge.

The plaintiff's claim is for damages for negligence in the custody of furniture lent on hire [*or* a carriage lent], [and for wrongfully, &c.]. — Hire.

The plaintiff's claim is for damages for wrongfully neglecting [*or refusing*] to pay the plaintiff's cheque.

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Bill.	The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts.
Bond.	The plaintiff's claim is upon a bond conditioned not to carry on the trade of a .
Carrier.	The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway.
	The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.
	The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.
	The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.
Charterparty.	The plaintiff's claim is for damages for breach of charterparty of ship [*Mary*].
Claim for return of goods and damages.	The plaintiff's claim is for return of household furniture, or, &c., or their value, and for damages for detaining the same.
Damages for depriving of goods.	The plaintiff's claim is for wrongfully depriving plaintiff of goods household furniture, &c.
Defamation.	The plaintiff's claim is for damages for libel.
	The plaintiff's claim is for damages for slander.
Distress. Replevin. Wrongful distress.	The plaintiff's claim is in replevin for goods wrongfully distrained.
	The plaintiff's claim is for damages for improperly distraining.
	[*This Form shall be sufficient whether the distress complained of be wrongful or excessive, or irregular, and whether the claim be for damages only, or for double value.*]
Ejectment.	The plaintiff's claim is to recover possession of a house, No. in street [*or of a farm called Blackacre*], situate in the parish of in the county of .
To establish title and recover rents.	The plaintiff's claim is to establish his title to [*here describe property*] and to recover the rents thereof.
	[*The two previous Forms may be combined.*]
Dower.	The plaintiff's claim is for dower.
Fishery.	The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing.
Fraud.	The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse [*or* a business, *or* shares, *or*, &c.].
	The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of A.B.
Guarantee.	The plaintiff's claim is for damages for breach of a contract of guarantee for A.B.
	The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.
Insurance.	The plaintiff's claim is for a loss under a policy upon the ship *Royal Charter*, and freight or cargo [*or* for return of premiums].
	[*This Form shall be sufficient whether the loss claimed be total or partial.*]

The plaintiff's claim is for loss under a policy of fire insurance upon house and furniture.	
The plaintiff's claim is for damages for breach of a contract to insure a house.	Fire insurance.
The plaintiff's claim is for damages for breach of contract to keep a house in repair.	Landlord and tenant.
The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm.	
The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.	Medical man.
The plaintiff's claim is for damages for injury by the defendant's dog.	Mischievous animal.
The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants.	Negligence.
The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants.	
The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway station, from the defective condition of the station.	
The plaintiff's claim is as executor of A.B. deceased, for damages for the death of the said A.B. from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants.	Lord Campbell's Act.
The plaintiff's claim is for damages for breach of promise of marriage.	Promise of marriage.
The plaintiff's claim is in quare impedit for	Quare impedit
The plaintiff's claim is for damages for the seduction of the plaintiff's daughter.	Seduction.
The plaintiff's claim is for damages for breach of contract to accept and pay for goods.	Sale of goods.
The plaintiff's claim is for damages for non-delivery [*or* short delivery, *or* defective quality, *or other breach of contract of sale*] of cotton [*or*, &c.].	
The plaintiff's claim is for damages for breach of warranty of a horse.	
The plaintiff's claim is for damages for breach of a contract to sell [*or* purchase] land.	Sale of land.
The plaintiff's claim is for damages for breach of a contract to let [*or* take] a house.	
The plaintiff's claim is for damages for breach of a contract to sell [*or* purchase] the lease, with goodwill, fixtures, and stock-in-trade of a public-house.	
The plaintiff's claim is for damages for breach of covenant for title [*or* for quiet enjoyment, *or*, &c.] in a conveyance of land.	
The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well [*or* cutting his grass, *or* pulling down his timber, *or* pulling down his fences, *or* removing his gate, *or* using his road *or* path, *or* crossing his field, *or* depositing sand	Trespass to land.

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there, *or* carrying away gravel thence, *or* carrying away stones from his river].

Support. The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land [*or* house *or* mine].

Way. The plaintiff's claim is for damages for wrongfully obstructing a way [*public highway or a private way*].

Watercourse, &c. The plaintiff's claim is for damages for wrongfully diverting [*or* obstructing, *or* polluting, *or* diverting water from] a watercourse.

The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land [*or* into the plaintiff's mine].

The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.

Pasture. The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture.

[*This Form shall be sufficient whatever the nature of the right to pasture be.*]

Light. The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house.

Sporting. The plaintiff's claim is for damages for the infringement of the plaintiff's right of sporting.

Patent. The plaintiff's claim is for damages for the infringement of the plaintiff's patent.

Copyright. The plaintiff's claim is for damages for the infringement of the plaintiff's copyright.

Trade mark. The plaintiff's claim is for damages for wrongfully using [*or* imitating] the plaintiff's trade mark.

Work. The plaintiff's claim is for damages for breach of a contract to build a ship [*or* to repair a house, &c.].

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, &c.

Nuisance. The plaintiff's claim is for damages to his house, trees, crops, &c., caused by noxious vapours from the defendant's factory [*or*, &c.].

The plaintiff's claim is for damages from nuisance by noise from the defendant's works [*or* stables, *or*, &c.].

Innkeeper. The plaintiff's claim is for damages for loss of the plaintiff's goods in the defendant's inn.

Add to Indorsement (O. 53, r. 2) :—

Mandamus. And for a mandamus commanding the defendant to

Add to Indorsement :—

Injunction. And for an injunction to restrain the defendant from

Add to Indorsement where claim is to land, or to establish title, or both :—

Mesne profits. And for mesne profits.

Arrears of rent. And for *an account of* rent or arrears of rent.

[*Note.*—If it is desired to sign judgment in default, the words in italics should be omitted, as no judgment in default can be signed for an account (see O. 15, r. 1), and the amount claimed for rent should be inserted, as a contract debt cannot be assessed as damages.]

Breach of covenant. And for breach of covenant for [*repairs*].

SECTION V. App. A. Pt. III. Secs. V., VI.

Probate (O. 3, r. 5).

1.

The plaintiff claims to be executor of the last will dated the day of , of C.W., late of , gentleman, deceased, who died on the day of , and to have the said will established. This writ is issued against you as one of the next of kin of the said deceased [*or as the case may be*]. — By an executor or legatee propounding a will in solemn form.

2.

The plaintiff claims to be executor of the last will dated the day of , of C.D., late of , deceased, who died on the day of , and to have the probate of a pretended will of the said deceased, dated the day of , revoked. This writ is issued against you as the executor of the said pretended will [*or as the case may be*]. — By an executor or legatee of a former will, or a next of kin, &c., of the deceased seeking to obtain the revocation of a Probate granted in common form.

3.

The plaintiff claims to be executor of the last will of C.D., late of , deceased, who died on the day of , dated the day of .

The plaintiff claims that the grant of letters of administration of the personal estate of the said deceased obtained by you should be revoked, and probate of the said will granted to him. — By an executor or legatee of will when letters of administration have been granted as in an intestacy.

4.

The plaintiff claims to be the brother and sole next of kin of C.D., of , deceased, who died on the day of , intestate, and to have as such a grant of administration to the personal estate of the said intestate. This writ is issued against you because you have entered a caveat, and have alleged that you are the sole next of kin of the deceased [*or as the case may be*]. — By a person claiming a grant of administration as a next of kin of the deceased, but whose interest as next of kin is disputed.

SECTION VI. Sec. VI.

Admiralty.

1.

The plaintiffs as owners of the vessel *Mary*, of the port of claim 1000*l.* against the brig or vessel *Jane*, for damage occasioned by a collision, which took place in the North Sea in the month of May last. — Damage to vessel by collision.

2.

The plaintiffs as owners of the cargo laden on board the vessel *Mary* of the port of , claim *l.* against the vessel *Jane*, for damage done to the said cargo in a collision in the North Sea in the month of May last. — Damage to cargo by collision.

[*The two previous Forms may be combined.*]

3.

The plaintiff as owner of goods laden on board the vessel *Mary*, on a voyage from Lisbon to England, claims from the owner of the said vessel *l.*, for damage done to the said goods during such voyage.

Damage to cargo otherwise.

4.

The plaintiff as sole owner of the vessel *Mary*, of the port of , claims to have possession decreed to him of the said vessel.

In causes of possession.

5.

The plaintiff claims possession of the vessel *Mary*, of the port of , as owner of 48-64th shares of the said vessel against C.D., owner of 16-64th shares of the said vessel.

6.

The plaintiff as part owner of the vessel *Mary*, claims against C.D., part owner and his shares in the said vessel *l.*, as part of the earnings of the said vessel due to plaintiff.

7.

The plaintiff as owner of 48-64th shares of the vessel *Mary*, of the port of , claims possession of the said brig as against C.D., the master thereof.

8.

The plaintiff under a mortgage, dated the day of claims against the vessel *Mary*, *l.* being the amount of his mortgage thereon, and *l.* for interest.

9.

The plaintiff as assignee of a bottomry bond, dated the day of , and granted by C.D. as master of the vessel *Mary*, of the port of , to A.B., at St. Thomas's, in the West Indies, claims *l.* against the vessel *Mary* and the cargo laden thereon.

10.

By a part owner of a vessel.

The plaintiff as owner of 24-64th shares of the vessel *Mary*, being dissatisfied with the management of the said vessel by his co-owners, claims that his co-owners shall give him a bond in *l.* for the value of the plaintiff's said shares in the said vessel.

11.

The plaintiffs as owners of the derelict vessel *Mary*, of the port of , claim to be put in possession of the said vessel and her cargo.

12.

By salvors.

The plaintiffs as the owners, master, and crew of the vessel *Caroline*, of the port of , claim the sum of *l.* for salvage services performed by them to the vessel *Mary*, off the Goodwin Sands, on the day of .

13.

Claim for towage.

The plaintiffs as owners of the steam-tug *Jane*, of the port of , claim *l.* for towage services performed by the said steam-tug to the vessel *Mary*, on the day of

14.

The plaintiffs as seamen on board the vessel *Mary*, claim *l.* for wages due to them, as follows (1), the mate 30*l.* for two months' wages from the day of

Seamen's wages.

15.

The plaintiffs claim *l.* for necessaries supplied to the vessel *Mary*, at the port of Newcastle-on-Tyne, delivered on the day of and the day of

For necessaries.

SECTION VII.

Sec. VII.

Indorsements of Character of Parties (O. 3, r. 4).

The plaintiff's claim is as executor [*or* administrator] of C.D., deceased, for, &c. — Executors.

The plaintiff's claim is against the defendant A.B., as executor [*or*, *&c.*] of C.D., deceased, for, &c.

The plaintiff's claim is against the defendant A.B., as executor of X.Y., deceased, for, &c., and against the defendant C.D., in his personal capacity, for, &c.

The plaintiff's claim is as trustee under the bankruptcy of A.B. for — Trustee in bankruptcy.

The plaintiff's claim is as [*or* the plaintiff's claim is against the defendant as] trustee under the will of A.B. [*or* under the settlement upon the marriage of A.B. and X.Y. his wife]. — Trustee.

The plaintiff's claim is as public officer of the bank, for — Public officer.

The plaintiff's claim is against the defendant as public officer of the bank, for

The plaintiff's claim is against the defendant A.B. as principal, and against the defendant C.D. as public officer of the bank, as surety, for — Principal and surety.

The plaintiff's claim is against the defendant as heir-at-law of A.B., deceased. — Heir and devisee.

The plaintiff's claim is against the defendant C.D. as heir-at-law, and against the defendant E.F. as devisee of lands under the will of A.B

The plaintiff's claim is as well for the Queen as for himself, for — *Qui tam* actions.

APPENDIX B.

PART I.

AFFIDAVITS OF SERVICE.

[*Note.—The affidavits of service here given are not part of Appendix B of the Rules of the Supreme Court, which commences with No. 1 of Part II., infra.*]

No. 1.

App. B. Pt. I.

Personal Service of Writ of Summons (whether within or without the jurisdiction) (O. 13, r. 2).

[*Title of Action, &c.*].

I [*name, address, and description of deponent*] make oath and say as follows :—

1. I did on the day of 19 at [*state where*] personally serve C. D. the above named defendant [*or* one of the above named defendants] with a true copy of the writ of summons in this action which appeared to me to have been regularly issued out of the Central Office of the Supreme Court [*or* the District Registry of the High Court of Justice] at the suit of the above named defendant [*or* defendants] at the suit of the above named plaintiff [*or* plaintiffs] and which was dated the day of 19 .

2. At the time of the said service the said writ and the copy thereof were subscribed in the manner and form prescribed by the Rules of the Supreme Court.

3. I did on the day of indorse on the said writ the day of the month and the week of the said service on the said defendant.

[*Jurat*] [*Signature of deponent*]

This affidavit is filed on behalf of the

No. 2.

Service on a Partner in a Firm (O. 48A, r. 3).

[*Title and commencement as in Form No. 1.*]

1. I did on the day of 19 at (*state where*) personally serve C. D., a partner in the above-named defendant firm of C. D. & Co., with a true copy of [*proceed as in Form No. 1 to the end of paragraph 3*].

[*If the partner was also served with notice that he was served as a partner, add the following paragraph*].

4. I did also at the time of the said service deliver to the said

C. D. a notice in writing that the said writ of summons was served on him as a partner in the said defendant firm.

[*Note.*—It will be seen from the above that Form No. 1, *supra*, may be adapted for proof of service on a partner in a firm.]

No. 3.

Service on Manager of Partnership Firm (O. 48A, r. 3).

[*Title and commencement as in Form No.* 1.]

1. I did on the day of , 18 , at being the principal place of business of the above-named Defendant Partnership within the jurisdiction of this Honorable Court, personally serve *E. F.* [*the insertion of the name is not essential*] the person having at the time of such service the control or management of the said Partnership business there, with a true copy of the writ of summons in this action which appeared to me to have been regularly issued out of the Central Office of the Supreme Court (*or* the District Registry of the High Court of Justice) against the above-named Defendant Partnership, at the suit of the above-named plaintiff, and which was dated the day of 19 .

2. At the time of the said service the said writ and the copy thereof were subscribed and indorsed in the manner and form prescribed by the Rules of the Supreme Court.

3. I did on the day of 19 , indorse on the said writ the day of the month and week of the said service.

4. I did at the time of the said service deliver to the person so served as aforesaid a notice in writing that the said writ of summons was served upon him as the person having the control or management of the partnership business of the said defendant firm.

[FORM OF NOTICE.—Take notice that the writ served herewith is served on you as the person having the control or management of the partnership business of the above-named defendant firm of . (*If the person served is also served as a partner add the words* and also as a partner in the said firm)].

No. 4.

Service on Limited Company

[*Title and commencement as in Form No.* 1.]

1. I did on the day of , 19 , serve the above-named defendants with a true copy of the writ of summons in this action which appeared to me to have been regularly issued out of the Central Office of the Supreme Court [or the District Registry of the High Court of Justice] against the above-named defendants at the suit of the above-named plaintiff, and which was dated the day of 19 , by [leaving the same at (*add place of service*) *or* sending the same by post in a prepaid letter or envelope addressed to the company at (*add address*)], which is the registered office of the said defendant company.

2. At the time of the said service the said writ and the copy thereof were subscribed and indorsed in the manner and form prescribed by the Rules of the Supreme Court.

3. I did on the day of , 19 , indorse on the said writ the day of the month and the week of the said service on the said defendant.

No. 5.

Service of Notice of Writ on Foreigner Abroad (O. 11, r. 6).

[*Title and commencement as in Form No.* 1].

1. I did on the day of 19 at in the [kingdom of, *or as the case may be*], personally serve the above-named defendant C. D. with a notice of the writ of summons in this action, a true dupl cate of which notice is hereunto annexed, marked A.

[*It is also advisable, though perhaps not absolutely necessary* (*see Forms App. A., Pt.* 1, *Nos.* 6, 10, *ante*) *to add*:—]

2. I did on the day of 19 indorse on the said copy, notice hereunto annexed, the day of the month and the week of the said service on the said defendant.

[*In the case of a foreign company* (*incorporated*) *the affidavit should run thus*:—

1. I did on the day of 19 at (in the kingdom of &c.), serve the defendants [*name of company*] which is a corporate body according to the law of [*name of country*] with notice, &c. [*as above*] by delivering the same to [the Secretary, *or other head officer, as the case may be*] at [*place of service*] the principal place of business of the said defendants.]

No. 6.

Personal Service of Originating Summons.

[*Title and commencement as in Form No.* 1.]

1. I did on the day of 19 personally serve C. D. the defendant [*or* respondent] herein with a true copy of the originating summons in this action [*or* matter] which appeared to me to have been regularly issued out of the Central Office of the Supreme Court [*or* the Manchester *or* Liverpool] District Registry of the High Court of Justice against the Defendants [*or* respondents. *If the names do not appear in the title they should be here stated*] on the application of the plaintiffs [or applicants, *naming them if not stated in title*] and which was dated the day of 19 .

[For Affidavit of Service of Ordinary Summons, see Part II., No. 23, *post*, p. 40.]

No. 7.

Service of Notice of Judgment or Order (O. 16, r. 40).

[*Title and Commencement as in Form No.* 1.]

1. I did on the day of 19 at [*place of service*] serve G. H. with notice of the judgment [*or* order] made in this action dated the day of 19 which said judgment is now produced and shown to me marked A. by delivering to and leaving with the said G. H. personally. [*If the person served is an infant or person of unsound mind not so found, one of the following forms must be followed at this point*:—

(*a*) Leaving with J. K. the father [*or* guardian] of the said G. H. who is an infant [*or* person of unsound mind not so found by inquisition] :—

(*b*) Leaving with L. M. the person with whom the said G. H. resides [*or* under whose care the said G. H. is] :—

If the person served is a lunatic the form should run :—leaving with N. O. the committee of the said G. H. who is a lunatic] :—

a true copy of the said judgment [*or* order].

2. At the time of the said service the said copy judgment [*or* order] so

served as aforesaid had indorsed thereon a memorandum in the words following; that is to say:—

Take notice that from the time of the service of this notice on you, you will be bound [*or, in case of an infant, &c.* the said G. H. will be bound] by the proceedings in the above action in the same manner as if you [*or* the said G. H.] had been originally made a party thereto, and that you may on entering an appearance attend the proceedings under the within-mentioned judgment, and that you may within one month after service of this notice apply to the Court to add to the judgment.

Appearances are entered at the Central Office, Royal Courts of Justice, Strand, London.

3. The said G. H. is one of the residuary legatees of [*or as the case may be*].

4. [*Show means of knowledge*].

No. 8.

Substituted Service by Post.

[*Title and commencement as in Form No.* 1.]

1. That I did on the day of 18 , serve the above-named defendant C.D. with a true copy of the writ of summons in this action and a true copy of the order of Master [*or* Mr. Justice] for substituted service herein, by posting the same at the post office at in a prepaid letter or envelope addressed to the said defendant at pursuant to the said order.

2. That the said writ of summons appeared to me to have been regularly issued out of the Central Office of the Supreme Court [*or* the District Registry of the High Court of Justice] against the above-named defendant at the suit of the above-named plaintiff, and was dated the day of , 19 .

3. I did on the day of , 19 , indorse on the said writ the day of the month and the week of the said service on the said defendant.

No. 9.

Service of Notice of Writ by Advertisement (O. 9, r. 2).

[*Title and Commencement as in Form No* 1.]

1. That I did on the day of , 19 , serve the above-named defendant, C. D., with notice of the writ of summons in this action and of the order for service by advertisement dated the day of , 19 , by causing to be inserted once in [*names of paper or papers as ordered*] an advertisement in the words following, namely:—

[*Title, Reference Number, &c.*]

To the above-named defendant, C. D.

Take notice that this action was on the day of , 19 , commenced against you, and that the plaintiff by his writ of summons claims [*here copy the claim indorsed on the writ*].

And take notice that the Court has, by order dated the day of , 19 , authorised service of the said writ of summons on you by the insertion of this notice once in [*names of paper or papers as ordered*].

And further take notice that you are required within [*number of days allowed by order*] days after the insertion of this advertisement, inclusive of the day of such insertion, to cause an appearance to be entered for you at [the Central Office, Royal Courts of Justice, Strand,

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London, *or*, the District Registry of the High Court of Justice at], and that in default of your so doing the plaintiff may proceed with this action, and judgment may be given against you in your absence.

2. The advertisement aforesaid appeared in the [*name of paper*] on the day of , 19 , and in the [*name of paper*] on the day of [*as the case may be*].

[NOTE.—*Indorsement of the writ with memorandum of the time of service under O. 9, r. 15, is not required when service is by advertisement* (Davies *v.* Lound, W. N. (85) 54).]

[*Affidavit on application for leave to serve out of the jurisdiction.*—The requisite contents of this affidavit will be found in conjunction with the cases thereon under O. 2, r. 4 (n.) "Affidavit in support," *ante*, Vol. I.]

PART II.

NOTICES, &c.

No. 1.

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Third Party Notice (O. 16, r. 48).

18 . [*Here put the letter and number.*]

In the High Court of Justice.

Division.

Between A.B. Plaintiff,

and

C.D. Defendant.

Notice filed , 18 .

To Mr. X.Y.

Take notice that this action has been brought by the plaintiff against the defendant (as surety for M.N., upon a bond conditioned for payment of 2000*l.* and interest to the plaintiff.

The defendant claims to be entitled to contribution from you to the extent of one-half of any sum which the plaintiff may recover against him, on the ground that you are [his co-surety under the said bond; *or*, also surety for the said M.N., in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated the day of , A.D.]).

Or [as acceptor of a bill of exchange for 500*l.*, dated the day of , A.D. , drawn by you upon and accepted by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation].

Or [as acceptor of a bill of exchange for 500*l.*, dated the day of , A.D. , drawn by you upon and accepted by the defendant, and payable three months after date.

sic. The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation].

Or [to recover damages for a breach of a contract for the sale and delivery to the plaintiff of 1000 tons of coal.

The defendant claims to be indemnified by you against liability in

respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent].

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant C.D., or your liability to the defendant C.D., you must cause an appearance to be entered for you within eight days after service of this notice.

In default of your so appearing, you will be deemed to admit the validity of any judgment obtained against the defendant C.D., and your own liability to contribute or indemnify to the extent herein claimed, which may be summarily enforced against you pursuant to the rules of the Supreme Court, 1883, Order XVI., Part VI.

(Signed) E.T.

Or X.Y.,

Solicitor for the defendant, E.T.

Appearance to be entered at .

[*Semble*, the letters E.T. at the end of the form are a mistake for C.D., who is named as defendant in the body of the form.]

No. 2.

Notice of Counterclaim (O. 21, r. 12).

[*Heading as in Form* 1.]

"To the within-named X.Y.

"Take notice that if you do not appear to the within counterclaim of the within-named C.D. within eight days from the service of this defence and counterclaim upon you, you will be liable to have judgment given against you in your absence.

"Appearance to be entered at

No. 3.

Notice of Payment into Court (O. 22, r. 4).

[*Heading as in Form* 1.]

Take notice that the defendant has paid into court £ , and says that that sum is enough to satisfy the plaintiff's claim [*or*, the plaintiff's claim for, *&c.*]

To Mr. X.Y., the Plaintiff's solicitor.

Z., Defendant's solicitor.

No. 4.

Acceptance of Sum paid into Court (O. 22, r. 7).

[*Title as in Form* 1, *supra.*]

Take notice that the plaintiff accepts the sum of £ paid by you into court in satisfaction of the claim in respect of which it is paid in.

No. 5.

Confession of Defence (O. 24, r. 3).

[*Heading as in Form* 1.]

The plaintiff confesses the defence stated in the paragraph of the defendant's defence [*or*, of the defendant's further defence].

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No. 6.

Interrogatories (O. 31, r. 4).

18 . [*Here put letter and number.*]

In the High Court of Justice.
Division.
Between A.B., Plaintiff,
and
C.D., E.F., and G.H., Defendants.

Interrogatories on behalf of the above-named [*plaintiff*, or *defendant C.D.*] for the examination of the above-named [*defendants E.F.* and *G.H.*, or *plaintiff*].

1. Did not, &c.
2. Has not, &c.

&c. &c. &c.

[*The defendant E.F. is required to answer the interrogatories numbered .*]

[*The defendant G.H. is required to answer the interrogatories numbered .*]

No. 7.

Answer to Interrogatories (O. 31, r. 9).

[*Title as in No. 6, supra.*]

The answer of the above-named defendant E.F. to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named E.F., make oath and say as follows :—

No. 8.

Affidavit as to Documents (O. 31, r. 13).

[*Heading as in Form* 1.]

I, the above-named defendant C.D., make oath and say as follows :—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. That [*here state upon what grounds the objection is made, and verify the facts as far as may be*].

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

5. The last-mentioned documents were last in my possession or power on [*state when*].

6. That [*here state what has become of the last-mentioned documents, and in whose possession they now are*].

7. According to the best of my knowledge, information, and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or

agent, or in the possession, custody or power of any other persons or person on my behalf, any deed, account, book of account, voucher receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

No. 9.

Notice to produce Documents (O. 31, r. 16).

[*Heading as in Form* 1.]

Take notice that the [*plaintiff or defendant*] requires you to produce for his inspection the following documents referred to in your [*statement of claim*, or *defence*, or *affidavit, dated the day of* A.D.].

Describe documents required.

X.Y., Solicitor to the

To Z., Solicitor for

No. 10.

Notice to inspect Documents (O. 31, r. 17).

[*Heading as in Form* 1.]

Take notice that you can inspect the documents mentioned in your notice of the day of A.D. [*except the deed numbered in that notice*] at [*insert place of inspection*] on Thursday next the instant between the hours of 12 and 4 o'clock.

Or, that the [*plaintiff or defendant*] objects to giving you inspection of the documents mentioned in your notice of the day of A.D. , on the ground that [*state the ground*] :—

No. 11.

Notice to admit Documents (O. 32, r. 3).

[*Heading as in Form* 1.]

Take notice that the plaintiff [*or* defendant] in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [*or* plaintiff], his solicitor or agent, at , on , between the hours of ; and the defendant [*or* plaintiff] is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respec-

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tively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

Dated, &c. (Signed)

G.H., solicitor [*or* agent] for plaintiff [*or* defendant].

To E.F., solicitor [*or* agent] for defendant [*or* plaintiff].

[*Here describe the documents, the manner of doing which may be as follows:*—]

ORIGINALS.

Description of Documents.	Dates.
Deed of covenant between A.B. and C.D. first part, and E.F. second part	January 1, 1848.
Indenture of lease from A.B. to C.D.	February 1, 1848.
Indenture of release between A.B. and C.D. first part, &c.	February 2, 1848.
Letter—defendant to plaintiff	March 1, 1848.
Policy of insurance on goods by ship "Isabella," on voyage from Oporto to London	December 3, 1847.
Memorandum of agreement between C.D., captain of said ship, and E.F.	January 1, 1848.
Bill of exchange for £100 at three months, drawn by A.B. on and accepted by C.D., indorsed by E.F. and G.H.	May 1, 1849.

COPIES.

Description of Documents.	Dates.	Original or Duplicate served, sent, or delivered, when, how, and by whom.
Register of baptism of A.B. in the parish of X. . .	January 1, 1848.	
Letter—plaintiff to defendant	February 1, 1848	Sent by General Post, February 2, 1848.
Notice to produce papers .	March 1, 1848 .	Served March 2, 1848 on defendant's attorney by E.F. of
Record of a judgment of the Court of Queen's Bench in an action, *F.S.* v. *F.N.* .	Trinity Term, 10th Vict.	
Letters patent of King Charles II. in the Rolls Chapel	January 1, 1680.	

No. 12.

Notice to admit Facts (O. 32, r. 5).

[*Heading as in Form* 1.]

Take notice that the plaintiff [*or* defendant] in this cause requires the defendant [*or* plaintiff] to admit, for the purposes of this cause only, the several facts respectively hereunder specified; and the defendant [*or* plaintiff] is hereby required, within six days from the service of this

notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this cause.

Dated, &c.

G.D., solicitor [*or* agent] for the plaintiff [*or* defendant].

To E.F., solicitor [*or* agent] for the defendant [*or* plaintiff].

The facts, the admission of which is required, are—

1. That John Smith died on the 1st of January, 1870.
2. That he died intestate.
3. That James Smith was his only lawful son.
4. That Julius Smith died on the 1st of April, 1876.
5. That Julius Smith never was married.

No. 13.

Admission of Facts, pursuant to Notice (O. 32, r. 5).

[*Heading as in Form* 1.]

The defendant [*or* plaintiff] in this cause, for the purposes of this cause only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of any such facts, or any of them, as evidence in this cause.

Provided that this admission is made for the purposes of this action only, and is not an admission to be used against the defendant [*or* plaintiff] on any other occasion, or by anyone other than the plaintiff [*or* defendant, *or party requiring the admission*].

Delivered, &c.

E.F., solicitor [*or* agent] for the defendant [*or* plaintiff].

To G.H., solicitor [*or* agent] for the plaintiff [*or* defendant].

Facts admitted.	Qualifications or Limitations, if any, subject to which they are admitted.
1. That John Smith died on the 1st of January, 1870.	1.
2. That he died intestate.	2.
3. That James Smith was his lawful son.	3. But not that he was his only lawful son.
4. That Julius Smith died.	4. But not that he died on the 1st of April, 1876.
5. That Julius Smith never was married.	5.

No. 14.

Notice to Produce (general form) (O. 32, r. 8).

[*Heading as in Form* 1.]

Take notice, that you are hereby required to produce and show to the Court on the trial of this all books, papers, letters, copies of letters, and other writings and documents in your custody, possession, or

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power, containing any entry, memorandum, or minute relating to the matters in question in this , and particularly

Dated the day of , 18 .

To the above-named

(Signed) , of
agent for , solicitor
h solicitor *or* agent . for the above-named

No. 15.

Issue (O. 34, r. 9).

[*Heading as in Form* 1.]

Whereas A.B. affirms, and C.D. denies [*here state the question or questions of fact to be tried*], and it has been ordered by the Hon. Mr. Justice that the said question shall be tried [*here state mode of trial, whether with or without a jury*], therefore let the same be tried accordingly.

No. 16.

Notice of Trial (O. 36, r. 13).

[*Heading as in Form* 1.]

Take notice of trial of this [*or* of the issues in this ordered to be tried] [*or as the case may be*] in [*or as the case may be*], for the day of next.

X.Y., plaintiff's solicitor [*or as the case may be*].

Dated .

To Z., defendant's solicitor [*or as the case may be*].

See *Harris* v. *Gamble*, 7 C. D. 877.

No. 16A.

Notice of Trial without Pleadings (O. 18A).

Take notice of trial of this cause without pleadings in Leicester [*or as the case may be*] for the day of next.

X.Y., plaintiff's solicitor [*or as the case may be*].

Dated .

To Z., defendant's solicitor [*or as the case may be*].

[R. S. C. Nov. 1893.]

No. 17.

Certificate of Officer after Trial with a Jury (O. 36, r. 42).

[*Heading as in Form* 1.]

I certify that this was tried before the Honourable Mr. Justice , with a special jury of the county of , on the 12th and 13th days of November, 1876.

The jury found [*state findings*].

The Judge directed that judgment should be entered for the plaintiff for £ , with costs of summons [*or as the case may be*].

A.B., [*Title of officer.*]

The day of , 18 .

No. 18.

Notice of Motion (O. 52).

[*Heading as in Form* 1.]

Take notice, that the court will be moved on day, the day of , 18 , at o'clock in the forenoon, or so soon thereafter as counsel can be heard, by that

Dated the day of , 18 .

(Signed) of agent for solicitor for the

To

[See D. C. F. 38.]

No. 19.

Notice of Discontinuance (O. 26, r. 1).

[*Heading as in Form* 1.]

Take notice, that the plaintiff hereby *

†

Dated the day of 18 .

(Signed) [*&c., as in* Form 18, *supra.*]

* "Wholly discontinues this action," or "withdraws so much of his claim in this action as relates to," &c.

† If not against all the defendants add, "as against the defendant."

No. 20.

Notice of Cross-examination of Deponents at Trial (O. 38, r. 28).

[*Title as in No.* 1, *supra.*]

Take notice, that the intend at the trial of this action to cross-examine the several deponents named and described in the schedule hereto on their affidavits therein specified.

And also take notice that you are hereby required to produce the said deponents for such cross-examination before the court aforesaid.

Dated the day of 18 .

(Signed) [*&c., as in* Form 18, *supra.*]

THE SCHEDULE above referred to.

Name of Deponent.	Address and Description.	Date when Affidavit Filed.

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No. 21.

Notice of Renewal of Writ of Execution (O. 42, r. 20).

[*Title as in No.* 1, *supra.*]

Take notice, that the writ of issued in this action directed to the sheriff of , and bearing date the day of , 18 , has been renewed for one year from the day of , 18 .

Dated the day of , 18 .

(Signed) [*&c., see* Form 18, *supra.*]

To the sheriff of .

No. 22.

Notice as to Stock under Order XLVI. (O. 46, r. 4).

To the [*here add the name of the company*].

Take notice that the stock comprised in and now subject to the trusts of the [*settlement, will, &c.*] referred to in the affidavit to which this notice is annexed consists of the following (that is to say) [*here specify the stock*].

This notice is intended to stop the transfer of the stock only, and not the receipt of dividends [*or*, the receipt of the dividends on the stock as well as the transfer of the stock].

(Signed) A.B.

[*Note.*—This notice must in every case be signed by the *deponent to the affidavit* to which it is annexed; see Form 27, *infra.*]

No. 23.

Affidavit of Service of Summons (O. 54, r. 5; O. 13, r. 2, and note).

[*Title as in Form* 1, *supra.*]

I , of , solicitor for the above-named , make oath and say as follows :—

I did on the day of 18 , before the hour of *six* (*a*) in the *after*noon, serve *solicitor for* the above-named in this action with a true copy of the summons [hereto annexed] *now produced and shown to me* marked A, by leaving it at the of the said situate *being the address for service in this action* with there .

Sworn at this day of 18 Before me

This affidavit is filed on behalf of the .

(*a*) *Two, if served on Saturday.*

[*Note.*—In the official form now in use the words within brackets are omitted and the words in italics have been added.]

No. 24.

Affidavit on Registration of Bill of Sale.

In the High Court of Justice,
Division. 18 . No.

I, of , make oath and say as follows :—

1. The paper writing hereto annexed, and marked A, is a true copy of a bill of sale, and of every schedule or inventory thereto annexed or therein referred to, and of every attestation of the execution thereof, as made and given and executed by

2. The said bill of sale was made and given by the said on the day of , 18 .

3. I was present and saw the said * duly execute the said bill of sale on the said day of , 18 .

4. The said resides at [*state residence at time of swearing affidavit*] and is [*state occupation*].

5. The name subscribed to the said bill of sale as that of the witness attesting the due execution thereof, is in the proper handwriting of me, this deponent.

6. I am a solicitor of the Supreme Court, and reside at .

7. Before the execution of the said bill of sale by the said , I fully explained to the nature and effect thereof.

Sworn, &c.

[The Bills of Sale Act, 1882, repeals so much of section 10 of the Bills of Sale Act, 1878, as required paragraphs 6 and 7 of the above affidavit, and renders them unnecessary in cases within the Act of 1882. See *Casson* v. *Churchley*, 53 L. J. Q. B. 335.]

No. 25.

Affidavit in support of Garnishee Order (O. 45, r. 1).

In the High Court of Justice.

Division. 18 , No.

Between , Judgment Creditor,

and , Judgment Debtor.

I, , of , the above-named judgment creditor [*or*, solicitor for the above-named judgment creditor], make oath and say as follows:—

1. By a judgment of the court given in this action, and dated the day of 18 , it was adjudged that I [*or*, the above-named judgment creditor] should recover against the above-named judgment debtor the sum of £ , and costs to be taxed, and the said costs were by a master's certificate dated the day of , 18 , allowed at £ .

2. The said still remains unsatisfied to the exient of , and interest amounting to £ .

3. ‡ is indebted to the judgment debtor , in the sum of £ or thereabouts.

4. The said is within the jurisdiction of this court.

Sworn [*&c., see* Form 23, *supra*].

‡ Name, address, and description of garnishee.

[*Note.—Paragraph* 3. It is sufficient if this paragraph runs. "I am informed and verily believe that *A. B.* is indebted," &c., and it is not necessary to state the amount of the debt sought to be attached (*Vinall* v. *De Pass*, (1892) A. C. 90; *Lucy* v. *Wood*, W. N. (84) 58; and see *De Pass* v. *Capital and Industries Corpn.* (1891) 1 Q. B. 216, cited O. 45, r. 1 (n.), "Affidavit by himself," &c.).

Paragraph 4. If garnishees are partners, the words should be "carry on business within the jurisdiction."]

No. 26.

Affidavit on Interpleader (O. 57, r. 2).

[*Title as in Form* 1, *supra.*]

I, , of , the defendant in the above action, make oath and say as follows:—

1. The writ of summons herein was issued on the day of , 18 , and was served on me on the day of 18 .

2. The action is brought to recover . The said * in my possession, but I claim no interest therein.

3. The right to the said subject-matter of this action has been and is claimed † by one who ‡ .

* "is" or "are."

† If claim in writing make the writing an exhibit.

‡ State expectation of suit, or that he has already sued.

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4. I do not in any manner collude with the said , or with the above-named plaintiff, but I am ready to bring into court or to pay or dispose of the said in such manner as the court may order or direct.

Sworn at [*&c., see* Form 23, *supra*].

No. 27.

Affidavit as to Stock under Order XLVI. (O. 46, r. 4).

In the matter of [*here state the nature of the document comprising the stock, and add the date and other particulars, so far as known to the deponent, sufficiently to identify the document*];

and

In the matter of the Act of Parliament, 5 Vict. c. 5.

I, , of , make oath and say that according to the best of my knowledge, information, and belief, I am [*or, if the affidavit is made by the solicitor, A.B.*, of , is] beneficially interested in the stock comprised in the [*settlement, will, &c.*] above-mentioned, which stock, according to the best of my knowledge and belief, now consists of the stock specified in the notice hereto annexed.

This affidavit is filed on behalf of A.B., whose address is [*state address for service*].

[*Note.*—The note stating on whose behalf the affidavit is filed should now be *indorsed* on the affidavit; see O. 38, r. 10; O. 46, r. 5. For form of notice to be annexed to this affidavit, see No. 22, *supra.*]

No. 28 (O. 57, r. 16).

Notice of Claim to Goods taken in Execution.

Take notice that A.B. has claimed the goods (or certain goods) [*where only certain goods are claimed here enumerate them*] taken in execution by the sheriff of , under the warrant of execution issued in this action. You are hereby required to admit or dispute the title of the said A.B. to the said goods and give notice thereof in writing to the said sheriff within four days from the receipt of this notice, failing which the said sheriff may issue an interpleader summons. If you admit the title of the said A.B. to the said goods and give notice thereof in manner aforesaid to the said sheriff you will only be liable for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

Dated, &c.

(Signed)

To the plaintiff. Sheriff of

No. 29 (O. 57, r. 16).

Notice of Plaintiff of Admission or Dispute of Title of Claimant.

Take notice that I admit (*or*, dispute) the title of A.B. to the goods [*or*, to certain of the goods, namely (*set them out*)] seized by you under the execution issued under the judgment in this action.

(Signed) Plaintiff or Solicitor.

To the sheriff of , and his officers.

APPENDIX C.

App. C. Secs. I., II.

FORMS OF STATEMENTS OF CLAIM TO BE USED PURSUANT TO ORDER XIX., RULE 5.

SECTION I.

18 . [*Here put letter and number.*]

In the High Court of Justice, Division. General.

Writ issued the of , 18 .

Between A.B. Plaintiff,

and

C.D. Defendant.

Statement of Claim.

The plaintiff, &c.

[*or*]

The plaintiff's claim is, &c.

[*To be filled up in manner exemplified in the following Forms.*]

The plaintiff claims [*as in following Forms*].

Place of trial

(Signed)

Delivered the of , 18 .

SECTION II.

Actions specially assigned to the Chancery Division by s. 34, sub-s. 3 of the Principal Act.

No. 1.

The plaintiff is a creditor of X.Y. deceased, of whom the defendant C.D. is executor [*or* administrator] and the defendant E.F. is heir at law [*or* devisee]. Administration.

Particulars of the claim :

Principal due on the bond of the testator [*or* intestate] dated the of , 18 .	£2,000	0	0
Interest from the of at 5 per cent.	250	0	0
	£2,250	0	0

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The plaintiff claims to be paid the amount due to him or to have the real and personal estate of the said X.Y. administered.

(Signed)
Delivered

No. 2.

Wilful default.

1. The plaintiff is residuary legatee of A.B. of the City of Bath, who died March 3rd, 1882, having made his will dated March 2nd, 1882, and appointed the defendants his executors, who proved his will April 6th, 1882.

2. The defendants have been guilty of wilful default in not getting in certain property of the testator.

3. The wilful default on which the plaintiff relies is as follows :—

C.D. owed to the testator £1,000, in respect of which no interest had been paid or acknowledgment given for five years before the testator's death. The defendants were aware of this fact, but never applied to C.D. for payment until more than a year after testator's death, whereby the said sum was lost.

The plaintiff claims :—

(1.) Account of testator's personal estate on footing of wilful default.

(2.) Administration of the testator's personal estate.

(Signed)
Delivered

No. 3.

Dissolution of partnership.

1. The plaintiff on December 20th, 1875, entered into partnership articles with the defendant for 10 years.

2. The defendant has broken the partnership articles as follows :—

a.

b.

c.

The plaintiff claims :—

1. Dissolution.
2. Accounts and inquiries.
3. A receiver and manager.

(Signed)
Delivered

No. 4.

For accounts.

1. The plaintiffs are executors of A., deceased.

2. From the year 1875 till his death A. employed the defendant as his confidential agent in the management of a large building estate at X.

3. The defendant as such agent received large sums of money for the said A., for which he refuses to account.

The plaintiffs claim :—

1. Accounts of all sums received and paid by the defendant as agent of A.
2. Payment of the amount found due.

(Signed)
Delivered

Foreclosure or sale.

No. 5.

1. The plaintiff is mortgagee of lands belonging to the defendant.
2. The following are the particulars of the mortgage :—
 (*a.*) [*Date and names of mortgagor and mortgagee.*]
 (*b.*) [*Sum secured.*]
 (*c.*) [*Rate of interest.*]
 (*d.*) [*Property subject to mortgage.*]
 (*e.*) [*Amount now due.*]

[*If the plaintiff's title is a derivative title, state shortly the assignments under which he claims.*]

[*If the plaintiff is mortgagee in possession add :*]

3. The plaintiff took possession of the mortgaged property on the of , and is ready to account as mortgagee in possession from that time.

The plaintiff claims payment, or, in default, sale, or foreclosure [and possession].

(Signed)
Delivered

[*Note.*—If a judgment for personal payment against the mortgagor is sought, the claim should set out the usual mortgagor's covenant for payment of the mortgage debt and interest (*Wethered* v. *Cox*, W. N. (88) 165).]

Redemption.

No. 6.

1. The plaintiff is mortgagor of lands, of which the defendant is mortgagee.
2. The following are the particulars of the mortgage :—
 (*a.*) [*Date.*]
 (*b.*) [*Sum secured.*]
 (*c.*) [*Rate of interest.*]
 (*d.*) [*Property subject to mortgage.*]

[*If the plaintiff's title is derivative, state shortly the deeds under which he claims.*]

[*If the defendant is mortgagee in possession add :*]

3. The defendant has taken possession [*or* has received the rents] of the mortgaged property.

The plaintiff claims to redeem the said premises, and to have the same reconveyed to him [and to have possession thereof].

(Signed)
Delivered

For raising portions or other charges on land.

No. 7.

1. By a settlement on the marriage of A.B. and C.B., dated January 10, 1850, Whiteacre was demised to trustees for 1,000 years on trust after the deaths of A.B. and C.B. to raise £5,000 for the younger children of the marriage who should attain 21.
2. A.B. died February 15, 1870.
3. C.B. died June 10, 1875.
4. There were five children only of the marriage of A.B. and C.B., all of whom are now living and have attained 21. The plaintiff is the second born child.
5. The defendants were on April 5, 1877, appointed trustees of the settlement.

The plaintiff claims :

1. To have £5,000 raised by sale or mortgage and distributed among the persons entitled.

(Signed)
Delivered

App. C. Sec. II.

Sale and distribution of proceeds of property subject to any lien or charge.

No. 8.

1. On November 12, 1880, A. and the defendant B. deposited with the plaintiff 500 Russian Government bonds as security for a debt of £1,000 and interest at 4 per cent. due from A. and the defendant B. to the plaintiff.

2. A. died March 12, 1881.

3. On March 30, 1881, administration of the estate of A. was granted to the defendant C.

4. £800 and £30 for interest is owing to the plaintiff on the security of the said bonds.

The plaintiff claims:

1. Sale of the said bonds.
2. Application of the proceeds in payment of his debt.
3. Distribution of the surplus among the parties entitled.

(Signed)

Delivered

No. 9.

Breach of trust.

1. By a settlement dated July 3, 1872, on the marriage of the plaintiffs' father and mother, of which the defendant A.B. and one C.D. were trustees, the plaintiffs are absolutely entitled on the deaths of their father and mother.

2. On August 5, 1874, C.D. died, and the defendant E.F. was appointed in his place.

3. On December 1, 1879, the plaintiffs' father died.

4. On January 1, 1880, the plaintiffs' mother died.

5. The defendants have committed the following breaches of trust by:

(*a.*) Sale of £3,000 Bank Stock and investment of the proceeds in the business of the defendant A.B.

(*b.*) Sale of leasehold property worth £5,000 to G.H. for £1,000 [without taking any proper steps to ascertain its value or to obtain such value].

The plaintiffs claim:

(1.) The replacement of £3,000 Bank Stock and £5 per cent. interest on the proceeds of the Bank Stock sold from the date of sale till replacement.

(2.) Payment of £4,000 and interest at 5 per cent. per annum from the date of the sale.

(Signed)

Delivered

No. 10.

Execution of trust.

1. By a settlement dated June 10, 1856, upon trust for A.B. and C.B. successively for life, with remainder for their children who should attain 21, the following property was assured:—

a. A sum of £5,735 14*s.* 2*d.* consolidated £3 per cent. annuities.

b. £4,000 invested on mortgage of land at X.

c. One-fifth of the residuary estate of D. deceased, subject to a prior life interest.

2. On August 15, 1862, C.B. died.

3. On February 15, 1875, A.B. died.

4. On September 10, 1879, D. died.

5. A.B. and C.B. had five children only, of whom the plaintiff is one.
6. The defendants are the present trustees of the settlement.

The plaintiff claims:

1. Execution of the trusts of the settlement.
2. All necessary accounts and inquiries.
3. A receiver.

(Signed)
Delivered

No. 11.

For rectification, &c. of instruments.

1. In 1865 a marriage was arranged between A.B. and the plaintiff.
2. By an agreement contained in two letters, dated February 10 and 12, 1865, it was agreed between C.B., the father of A.B., and D., the father of the plaintiff, that each should settle £10,000 on trust, for A.B. and the plaintiff successively for life, with remainder on the usual trusts for the children of the marriage.
3. By letter, dated March 7, 1865, from D. to Messrs. E. & Co., his solicitors, he instructed them to prepare a settlement.
4. A settlement, dated April 25, 1865, was executed upon the marriage of A.B. and the plaintiff, accidentally omitting to give a life interest to the plaintiff after the life interest of A.B.
5. On May 20, 1882, A.B. died.
6. The defendants, H. and K., are the present trustees of the settlement.
7. The defendants, L., M., and N., are the only children of the marriage.

The plaintiff claims:

Rectification of the settlement.

(Signed)
Delivered

No. 12.

Specific performance.

1. By an agreement [*or* letters] dated [*or* made verbally at interviews on or about] the day of , the plaintiff agreed to sell to the defendant the Home Farm, Kent, for £ . The sale was to be completed on the of .

[*If the agreement was verbal, add*—]

2. The agreement so entered into has been part performed as follows [*state how*].

The plaintiff claims specific performance of the above agreement and that the defendant may be ordered to execute a proper conveyance of the premises to the plaintiff [*stating in each case what the defendant is required specifically to do*].

(Signed)
Delivered

[*Note.*—It would seem that the defendant being *purchaser*, could scarcely be called on to convey to the plaintiff *vendor*.]

No. 13.

Partition or sale of real estates.

1. By will, dated January 5, 1864, A. devised Whiteacre to B., C., and D. as tenants in common.
2. On March 10, 1865, A. died.
3. On March 20, 1865, A.'s will was proved.

App. C. Secs. II., III.

4. On June 25, 1867, B. conveyed to the plaintiff his share of Whiteacre.
5. On July 30, 1869, C. conveyed his share to the defendants on trust for sale.
6. By will, dated November 5, 1872, D. devised his share among his children equally.
7. On December 2, 1872, D. died.
8. On December 15, 1872, D.'s will was proved.
9. There were 10 children of D. living at his decease, some of whom have since died.
[10. Whiteacre consists of a mansion, house, and grounds.
11. A sale of the property and a division of the proceeds will be more beneficial than a division of the property.]

The plaintiff claims:
A division of Whiteacre among the parties interested.
[*or* a sale of Whiteacre and distribution of the proceeds among the parties interested.]

(Signed)
Delivered

No. 14.

Wardship of infants and care of infants' estates.

1. By will, dated August 10, 1882, A. devised Whiteacre and £10,000 to defendant on trust for plaintiff.
2. On August 15, 1882, A. died.
3. On August 30, 1882, probate was granted to the defendant, the sole executor.
4. The plaintiff is an infant 12 years old.

The plaintiff claims:
1. That the plaintiff may become a ward of Court.
2. Administration of the trusts of the will of A. so far as necessary.

(Signed)
Delivered

SECTION III.

Actions within the exclusive Cognizance of the Probate Divorce and Admiralty Division. Section 34 of the principal Act.

No. 1.

Interest suit (Probate).

The plaintiff is cousin-german and one of the next of kin of M.N., late of No. 1, High Street, Putney, in the county of Surrey, grocer, who died on or about the 1st of March, 1883, a widower without child, parent, brother, or sister, uncle or aunt, nephew or niece.

The plaintiff claims:
A grant to him of letters of administration of the personal estate and effects of the said deceased.

(Signed)
Delivered

No. 2.

Probate of will in solemn form.

The plaintiff is the executor appointed under the will of C.T., late of Bicester, in the county of Oxford, gentleman, who died on the 20th of January, 1883, the said will bearing date the 1st of January, 1875, and a codicil thereto, the 1st of October, 1875.

The plaintiff claims:

That the Court shall decree probate of the said will and codicil in solemn form of law.

(Signed)

Delivered

No. 3.

Bottomry.

1. A bond, dated the 13th of October, 1883, was executed by the master of the ship *Onward* at Mauritius, binding the said ship and her cargo, viz., 940 tons of teak timber, and her freight, for payment unto Messrs. H. and Co., their assigns, order, or indorsees, of 24,000 dollars, Mauritius currency, with maritime premium at the rate of 128 dollars for every 100 dollars, within 20 days next after the arrival of the said ship at her port of discharge: payment to be made both of capital and interest in British sterling money at the rate of 4 shillings for every dollar.

2. The plaintiffs are assignees of the said bond from the said Messrs. H. and Co.

The plaintiffs claim:

1. That the Court pronounce for the validity of the bond.
2. Condemnation of the defendants and their bail in the sum of £

(Signed)

Delivered

No. 4.

Equipment and necessaries.

The plaintiff supplied necessaries and equipment, and did repairs to the vessel *The Ellen* in the months of February and March, 1883, at the port of London, on the order of Messrs. K. L., who were duly authorised in that behalf: the said vessel being a British Colonial vessel, belonging to the port of Digby in Nova Scotia, and having no owner or part owner who was at the time of the commencement of this action, or is domiciled in England or Wales.

The plaintiff claims:

1. £305 3*s*., with interest thereon at 5 per cent. per annum from the 19th of February, 1883, until judgment.
2. The condemnation of the defendant and his bail in the said sum.

(Signed)

Delivered

No. 5.

Possession.

The plaintiff is owner of 32–64th parts or shares, and master, of the vessel *Lady of the Lake*, and the defendant, who is owner of the remaining 32–64th parts, withheld possession of the said vessel from the plaintiff.

App. C. Secs. III., IV.

The plaintiff claims:

1. Possession of the said vessel.
2. The condemnation of the defendant in all losses and damages occasioned by the defendant's withholding possession of the vessel from the plaintiff.

(Signed)
Delivered

No. 6.

Salvage.

The plaintiffs are the owners, master, and crew of the steamship *Brazilian*, of the port of Newcastle, of the burthen of 1,300 tons gross registered tonnage, and rendered salvage services to the steamship *Campanil* off the coast of Portugal, on or about the 26th and 27th of December, 1882.

Particulars:—

	£
1. Value of *Campanil* at the time of the services	13,000
Value of cargo	300
Freight	675
2. Value of *Brazilian*, her freight and cargo	2,050
3. Damage sustained by *Brazilian*	150
Extra coal consumed	16
Paid for harbour dues, &c., at Vigo	4

The plaintiffs claim:

Such amount of salvage as may be just.

(Signed)
Delivered

[A fuller statement than this is generally necessary (*The Isis*, 8 P. D. 227).]

SECTION IV. (*Special Indorsements*).

Actions included in Order III., Rule 6, Classes A., B, C, D, E, and F.

No. 1.

Goods sold and delivered.

The plaintiff's claim is for the price of goods sold, and delivered.

Particulars:—

	£	s.	d.
1881—31st December—			
Balance of account for butcher's meat to this date	35	10	0
1882—1st January to 31st March—			
Butcher's meat	74	5	0
	109	15	0
1882—1st February.—Paid	45	0	0
Balance due	£64	15	0

Place of trial, London.

(Signed)
Delivered

[N.B.—The heading "Statement of Claim," and the signature as a pleading, have been held by the Irish Court of Appeal to be absolutely essential features of a special indorsement (*Cassidy & Co.* v. *M'Aloon*, 32 L. R. Ir. 368). The word "delivered" at the end of the forms in this section, may be disregarded when the writ is specially indorsed with the claim (*Veale & Co.* v. *Automatic Boiler Feeder Co.*, 18 Q. B. D. 631); and see App. A., Part I., Forms 2, 4, *ante*.]

No. 2.

Money had and received.

The plaintiff's claim is for money received by the defendant for the use of the plaintiff.

Particulars:—

1882.—1st January.—	£	s.	d.
To amount of rents of No. 5, Smith Street, collected by the defendant	72	10	0
To deposit on intended sale of Eva Villa	100	0	0
Amount due	£172	10	0

Place of trial, London.

(Signed)
Delivered

No. 3.

Payee against maker of a promissory note.

The plaintiff's claim is against the defendant, as maker of a promissory note for £250, dated 1st January, 1882, payable four months after date.*

Particulars:—

	£
Principal	250
Interest	10
Amount due	£260

Place of trial, Lancashire, West Derby division.

(Signed)
Delivered

[*Note, Ed.*—It would appear desirable that this form should show to whom the promissory note is payable.]

No. 4.

Indorsee against acceptor of bill of exchange.

The plaintiff's claim is against the defendant, as acceptor of a bill of exchange for £400, dated 1st January, 1882, drawn by A.B., payable three months after date to the order of E.F., and indorsed to the plaintiff.

Particulars:—

	£
Principal due	400
Interest	16
Amount due	£416

(Signed)
Delivered

No. 5.

Indorsee against

The plaintiff's claim is against the defendant A.B. as acceptor, and against the defendant C.D. as drawer, of a bill of exchange for £500,

App. C. Sec. IV.

acceptor and drawer of a bill of exchange severally.

dated 1st January, 1882, payable three months after date, and indorsed by the defendant C.D. to the plaintiff, of the dishonour of which on presentation the defendant C.D. had notice.

Particulars :—	£
Principal	500
Interest	20
Amount due	£520

Place of trial, city of Bristol.

(Signed)
Delivered

[*Note.*—As to notice of dishonour, see Vol. I., O. 3, r. 6, (n.) "Bill of Exchange, &c."

Dishonoured Cheque.—An averment that notice of dishonour has been given to the drawer is an essential part of a special indorsement on a dishonoured cheque (*Fruhauf* v. *Grosvenor*, 61 L. J. Q. B. 717).]

No. 6.

Payee against drawer of a bill of exchange excusing notice of dishonour.

The plaintiff's claim is against the defendant as drawer of a bill of exchange for £600 dated 1st March, 1882, drawn upon A.B., payable to plaintiff three months after date, which was duly presented for payment and dishonoured, but A.B. had no effects of the defendant, nor was there any consideration for the payment of the said bill by the said A.B.

Particulars (as in Form 4).

Place of trial,

(Signed)
Delivered

No. 7.

Obligee against obligor of a money bond.

The plaintiff's claim is for principal and interest due upon the defendant's bond to the plaintiff, dated 1st January, 1873, conditioned for payment of £100 on the 26th December, 1873.

Particulars :—	£
Principal	50
Interest	2
Amount due	£52

Place of trial, Surrey.

(Signed)
Delivered

[*Note.*—See O. 3, r. 6, (n.) "Bond or Contract under Seal."]

No. 8.

Covenantee against covenantor on a covenant to pay money.

The plaintiff's claim is for principal and interest due under a covenant in a deed dated the 1st of January, 1882.

Particulars :—	£
Principal	100
Paid	20
Principal due	80
Interest	3
Amount due	£83

Place of trial, London.

(Signed)
Delivered

[*Note.*—Whether this form ought not to state the names of the parties to the covenant, *quære.*]

No. 9.

Against shareholder for allotment money and calls by a company under 25 & 26 Vict. c. 89.

The plaintiff's claim is for money in which the defendant, as a member of the Company, is indebted to the plaintiffs (being a company incorporated under the Companies Act, 1862) for allotment money of per share on shares in the Company allotted to the defendant, as such member, at his request, and for calls of £ each upon shares in the Company of which the defendant is a holder, whereby an action has accrued to the plaintiffs.

Particulars :—	£
18 —Allotment of shares to the defendant at £ per share	
18 —(1st) call at £ per share	
(2nd) call at £ per share	
Amount due	£

Place of trial,

(Signed)
Delivered

No. 10.

On a guarantee for the price of goods setting out the guarantee.

The plaintiff's claim is for the price of goods sold and delivered by the plaintiff to E. F., under the following guarantee :—

2nd February, 1882.

SIR,—In consideration of your supplying goods to E.F., I undertake to see you paid.

Yours, &c.,
C.D. (defendant).

To Mr. A. B. (plaintiff).

Particulars :

1882.	£	*s.*	*d.*
25 March, 55 tons of coal at 20*s.*	55	0	0
Amount due	£55	0	0

Place of trial,

(Signed)
Delivered

App. C. Secs. IV., V.

No. 11.

Creditor against principal debtor and his surety severally on a guarantee for goods sold.

The plaintiff's claim is against the defendant A.B. as principal, and against the defendant C.D. as surety, for the price of goods sold and delivered by the plaintiff to A.B. on the guarantee by C.D., dated the 2nd of February, 1882.

Particulars :—	£	s.	d.
2nd February—Goods	47	15	0
3rd March—Goods	105	14	0
17th March—Goods	14	12	0
5th April—Goods	34	0	0
Amount due	£202	1	0

Place of trial, Surrey.

(Signed)
Delivered

No. 12.

Debt upon a trust.

The plaintiff's claim is against the defendants as trustees under the settlement upon the marriage of A.B. and X.Y., dated January 1st, 1870, whereby £10,000 invested on mortgage of land at Z. was vested in the defendants as trustees upon trust to pay the income thereof half-yearly to the plaintiff.

Particulars :—	£
1882. December 25th, half a year's income	200

No. 13.

Landlord against tenant whose term has expired or has been determined by notice to quit.

See Sec. VII., Form No. 1.

SECTION V.

Actions for Damages for Breach of Contract or Duty arising out of Contract.

No. 1.

Buyer against seller of goods for not delivering.

1. The plaintiff has suffered damage by breach of contract for sale and delivery by the defendant to the plaintiff of 100 tons of Scotch pig iron at £5 per ton to be delivered on rail at Middlesborough on the 15th of March, 1882.

2. The defendant did not deliver any (*or* tons, *as the case may be*) of the said iron.

Particulars of damage :—	£
Loss of profit at £1 per ton on 100 tons	100

The plaintiff claims £100.

Place of trial, London.

(Signed)
Delivered

No. 2.

Buyer against seller of goods for delivering them inferior to contract.

1. The plaintiff has suffered damage by breach of a contract between the plaintiff and the defendant for sale and delivery of 100 sacks of flour known as seconds at 35*s.* per sack.

2. 80 sacks delivered were inferior to seconds, and 20 sacks were not delivered.

Particulars of damage :—	£
80 sacks at 4*s.*	16
20 sacks at 5*s.*	5
	£21

The plaintiff claims £21.

Place of trial, Surrey.

(Signed)
Delivered

No. 3.

Shipowner against charterer for detention beyond the demurrage days.

1. The plaintiff has suffered damage by breach of a charter-party dated the 10th of March, 1882, between the plaintiff and the defendant of the ship *Mary*.

2. The ship was detained at the port of loading.

Particulars of damage :—		£
1882 Jan. 1 to Jan. 10	10 days' detention beyond the demurrage days, at £25 per day	250

The plaintiff claims £250.

Place of trial, London.

(Signed)
Delivered

No. 4.

Shipper against master on a bill of lading for damage to goods.

1. The plaintiff has suffered damage by breach of contract by bill of lading of goods shipped by the plaintiff on board the *Jane* signed by defendant, dated the 1st of January, 1882.

2. 50 bales of cotton were delivered in a damaged condition.

Particulars of damage :—	£
50 bales at £2	100

The plaintiff claims £100.

Place of trial, City of Bristol.

(Signed)
Delivered

App. C. Sec. V.

No. 5.

Shipper against ship-owner on a bill of lading for damage and short delivery.

1. The plaintiff has suffered damage by breach of contract by bill of lading of goods shipped by the plaintiff signed by the master of the ship *Mary* as the defendant's agent, dated the 1st of January, 1882.

2. 50 quarters of wheat were delivered in a damaged condition, and 100 quarters were not delivered.

Particulars of damage :—	£
100 quarters at 40*s.*	200
50 quarters at 4*s.*	10
	£210

The plaintiff claims £210.

Place of trial, Lancashire, West Derby Division.

(Signed)
Delivered

No. 6.

On a marine policy against underwriter.

The plaintiff was interested to the amount of £ under a marine policy of insurance for that amount, dated the of , 18 , on the ship *Hero*, subscribed by the defendant for £ .

Particulars :—

1. Valued or open :—Valued at £20,000.
2. Voyage :—At and from Cardiff to Valparaiso.
3. [*Or*, Time :—From noon of 1st January, 1882, to noon of 1st January, 1883.]
4. Premium to defendant :—£ per cent.
5. Perils insured against causing loss :—Of the seas.
6. Loss :—Total [*or* exceeding 3 per cent.]

The plaintiff claims £ .

Place of trial, Bristol.

(Signed)
Delivered

No. 7.

Passenger against railway company for negligence.

The plaintiff has suffered damage from the defendants' negligence in carrying the plaintiff as a passenger by railway from London to Brighton, causing personal injuries to the plaintiff, in a collision near Hayward's Heath on the 15th January, 1882.

Particulars of expenses, &c. :—	£	*s.*	*d.*
Loss of 15 weeks' salary as clerk at £2 per week	30	0	0
Dr. Smith	10	10	0
Nurse for 6 weeks	3	0	0
	£43	10	

The plaintiff claims £500.

Place of trial, Sussex.

(Signed)
Delivered

No. 8.

Client against solicitor for negligence.

1. The plaintiff has suffered damage from the defendant's negligence in his conduct for the plaintiff, as his solicitor, of business undertaken by the defendant on the plaintiff's retainer.

2. The negligence was in making an application under Order XIV., Rule I., in the case of A.B. (the plaintiff) *v.* C.D., where the case was one of unliquidated damages and not of debt.

Particulars of damage :—

Taxed costs paid to defendant on dismissal of summons £

The plaintiff claims £ .

Place of trial, .

(Signed)
Delivered

No. 9.

Landlord against tenant for breach of covenant to repair.

1. By a repairing covenant contained in a lease under seal from the plaintiff to the defendant, dated the 1st of January, 1876, of a house No. 401, Piccadilly, for seven years from the 25th day of December, 1875, the defendant covenanted to keep the premises in such repair and condition as therein mentioned.

2. The premises were during the term out of such repair as was required by the covenant.

3. They were yielded up out of such repair at the expiration of the term.

4. Particulars of dilapidations were delivered to the defendant's solicitor on the of , 18 , and exceed three folios.

The plaintiff claims £ .

Place of trial, .

(Signed)
Delivered

No. 10.

Breach of promise of marriage.

1. The plaintiff has suffered damage by breach of promise by the defendant to marry her on the of [*or*, within a reasonable time, which elapsed before action] [*or*, on the death of A.B., which happened before action].

2. The defendant refused to marry the plaintiff on the of [*or*, within a reasonable time] [*or*, on the death of A.B.]

Particulars of special damage.
[*As the case may be, if any.*]

The plaintiff claims £ .

Place of trial,

(Signed)
Delivered

App. C. Sec. VI.

SECTION VI.

Actions claiming Injunctions, Damages, or Declarations of Right founded on Wrongs.

No. 1.

Conversion of goods.

The plaintiff has suffered damage by the defendant wrongfully depriving the plaintiff of two casks of oil by refusing to give them up on demand [*or*, throwing them overboard out of a boat in the London Docks, &c.]

[*If any special damage is claimed, add*]—

Particulars [*fill them in*].

The plaintiff claims £100.

Place of trial. London.

(Signed)
Delivered

No. 2.

Detinue.

The defendant detained from the plaintiff the plaintiff's goods and chattels, that is to say, a horse, harness, and gig.

The plaintiff claims a return of the said goods and chattels or their value, and £10 for their detention.

Place of trial, Lincolnshire.

(Signed)
Delivered

No. 3.

Negligent driving.

The plaintiff has suffered damage from personal injuries to the plaintiff and damages to his carriage, caused by the defendant or his servant on the 15th of January, 1882, negligently driving a cart and horse in Fleet Street.

Particulars of expenses, &c.

	£	s.	d.
Charges of Mr. Smith, surgeon	10	10	0
Charges of Mr. Jones, coachmaker	14	5	6
	£24	15	6

The plaintiff claims £150.

Place of trial, London.

(Signed)
Delivered

No. 4

Lord Campbell's Act.

The plaintiff, as executor of C.D., deceased, brings this action for the benefit of Eva the wife, and William and Margaret and Dorothea, the children of C.D. [*as the case may be*], who have suffered damage from the defendant's negligence, in carrying the said C.D. by omnibus, whereby the said C.D. was killed in Cornhill on the 15th of January, 1882.

Particulars pursuant to Statute are delivered herewith.

The plaintiff claims £500.

Place of trial, London.

(Signed)
Delivered

No. 5.

Collision of ships.

The plaintiff has suffered damage from injuries to his ship, the *Betsy*, and the cargo on board thereof, by a collision with the ship, the *Jane*, caused by the negligent navigation thereof by the defendant or his servants on the river Thames, on the 1st of February, 1883.

Particulars of loss and expenses:—

1. Charges of Jones & Co., shipwrights, £450 2*s*.
2. Loss of use of ship from 1st of February, 1883, to 1st of March, 1883, £280.

Particulars of damage to cargo:—
[*Insert them.*]

The plaintiff claims £

Place of trial, London.

(Signed)
Delivered

No. 6.

Injunction, &c. for infringement of patent.

The defendant has infringed the plaintiff's patent, No. 14,084, granted for the term of 14 years, from the 21st of May, 1880, for certain improvements in the manufacture of iron and steel, whereof the plaintiff was the first inventor.

The plaintiff claims an injunction to restrain the defendant from further infringement and £100 damages.

Particulars of breaches are delivered herewith.

Place of trial, Durham.

(Signed)
Delivered

No. 7.

Damages for infringement of copyright.

The defendant has infringed the plaintiff's copyright in a book entitled "The History of Rome," registered on the day of

App. C. Sec. VI.

Particulars of special damage are as follows:—

	£
Loss of sale of fifty copies	50
Loss of profit in the copyright	50
	£100

The plaintiff claims £100.

Place of trial, Surrey.

(Signed)
Delivered

No. 8.

Injunction, &c. for infringement of trade mark.

1. The defendant has infringed the plaintiff's trade mark.
2. The trade mark is [*describe it*].
[*If the plaintiff is not the original proprietor of the trade mark, show shortly how his title is derived.*]
3. The following are the acts complained of, viz.:—
[*Set them out.*]

The plaintiff claims an injunction to restrain the defendant, his servants, and agents, from infringing the plaintiff's said trade mark, and in particular from [*stating any particular injunction sought*].

The plaintiff also claims an account or damages.

(Signed)
Delivered

No. 9.

Seduction.

The plaintiff has suffered damage from the seduction and carnally knowing by the defendant of G.H. the [daughter and] servant of the plaintiff.

Particulars of special damage are as follows:—

	£	s.	d.
Loss of service from the 1st of March to the 30th of November, 1882	100	0	0
Nursing and medical attendance	10	10	0
	£110	10	0

The plaintiff claims £500.

Place of trial, Berkshire.

(Signed)
Delivered

No. 10.

Obstruction of lights.

1. The plaintiff is the owner [*or*, lessee] and occupier of a house, 700, Regent Street, in which are the following ancient lights:—
(1.) The kitchen window in the basement on the south side.

(2.) The two back dining-room windows on the ground floor on the south side.

(3.) The landing window and back drawing-room window on the south side.

2. The defendant is erecting a building which will, if not stopped, materially diminish the light coming through the said windows.

The plaintiff claims an injunction to restrain the defendant, his contractors, servants, and workmen, from continuing the erection of the building, so as to obstruct or diminish the access of light to the said windows or any of them.

The plaintiff will also, if necessary, claim to have the said building pulled down, or damages for the injury he will sustain if the same is completed and not pulled down.

(Signed)
Delivered

No. 11.

Nuisance by smells.

The plaintiff has suffered damage from offensive and pestilential smells and vapours caused by the defendant in the plaintiff's dwelling-house, No. 15, James Street, Durham.

The plaintiff claims:—

(1.) £50.

(2.) An injunction to restrain the defendant from the continuance or repetition of the said injury or the committal of any injury of a like kind in respect of the same property.

Place of trial, Yorkshire, West Riding.

(Signed)
Delivered

No. 12.

Nuisance by pollution of water.

1. The plaintiff is the owner [*or*, lessee] and occupier of a farm known as , through which there runs a river known as .

2. The defendant or persons in his employ pollute the water in the said river by passing into the same the refuse of the defendant's dye-works, situate higher up the said river.

The plaintiff claims an injunction to restrain the defendant, his servants and agents, from sending from the said dye-works into the said river any matter so as to pollute the waters thereof, or to render them unwholesome or unfit for use, to the injury of the plaintiff [*or, as the case may be*].

The plaintiff will also claim damages in respect of the said nuisance.

Place of trial,

(Signed)
Delivered

No. 13.

Fraudulent prospectus.

1. On 31st January, 1883, the defendant issued a prospectus to the public relating to the A.B. Company, Limited.

App. C. Sec. VI.

2. On Feb. 1st, 1883, the plaintiff received a copy of this prospectus.
3. The plaintiff subscribed for 100 shares in the Company on the faith of this prospectus.
4. The prospectus contained misrepresentations, of which the following are particulars :—
 (*a.*) The prospectus stated ". whereas in fact
 (*b.*) The prospectus stated ". whereas in fact
 (*c.*) The prospectus stated ". whereas in fact
5. The defendant knew of the real facts as to the above particulars.
6. The following facts, which were within the knowledge of the defendants, are material, and were not stated in the prospectus :
 (*a.*)
 (*b.*)
7. The plaintiff has paid calls to the Company to the extent of £1,000.

The plaintiff claims :—
1. Repayment of £1,000 and interest.
2. Indemnity.

(Signed)
Delivered

No. 14.

Fraudulent sale of a lease.

The plaintiff has suffered damage from the defendant inducing the plaintiff to buy the goodwill and lease of the George public-house, Stepney, by fraudulently representing to the plaintiff that the takings of the said public-house were £40 a week, whereas in fact they were much less, to the defendant's knowledge.

Particulars of special damage :—
[*Fill them in.*]

The plaintiff claims £

(Signed)
Delivered

No. 15.

Malicious prosecution.

The defendant maliciously and without reasonable and probable cause preferred a charge of larceny against the plaintiff before a justice of the peace, causing the plaintiff to be sent for trial on the charge and imprisoned thereon, and prosecuted the plaintiff thereon at the Middlesex Quarter Sessions, where the plaintiff was acquitted.

Particulars of special damage :—
Messrs. L. and L.'s bill of costs, £65.
Loss in business from January 1, 1883, to February 18, 1883, £100.

The plaintiff claims £500.

Place of trial,

(Signed)
Delivered

SECTION VII.

Actions for Recovery of Land, &c.

No. 1.

Landlord against tenant whose term has expired, &c.

1. The plaintiff is entitled to the possession of a farm and premises called Church Farm, in the parish of St. James, in the county of Surrey, which was let by the plaintiff to the defendant for the term of three years from the 29th of September, 1879, which term has expired [*or* as tenant from year to year from the 29th September, 1875, which said tenancy was duly determined by notice to quit expiring on the 29th of September, 1881].

The plaintiff claims possession and £50 for mesne profits.

Place of trial, Surrey.

(Signed)
Delivered

[See Vol. I. O. 3, r. 6 (F); *Casey* v. *Hulyer*, 17 Q. B. D. 97, cited thereunder (n.) "Conditions on which Rule Applicable."]

No. 2.

Heir-at-law against stranger.

1. The plaintiff is entitled to the possession of Blackacre, in the parish of [*or*, of No. 2, Bridge Street, Bristol], in the county of .

2. On and before the of , 188 , A.B. was seised in fee and in possession of the premises.

3. On the of , 188 , the said A.B. died so seised, whereupon—

4. The estate descended to the plaintiff, his eldest son and heir-at-law.

5. After the death of the said A.B. the defendant wrongfully took possession of the premises.

The plaintiff claims:—

1. Possession of the premises.
2. Mesne profits from the of

Place of trial,

(Signed)
Delivered

App. D.
Sec. I.

APPENDIX D.

FORMS OF DEFENCE TO BE USED PURSUANT TO ORDER XIX., RULE 5.

SECTION I.

General Form.

18 . No.

In the High Court of Justice,
Division.

Between , Plaintiff,
and
, Defendant.

Defence.

The defendant says that :—

1.
2.
3. } [*To be filled up in the manner exemplified in the following Forms.*]

(Signed)
Delivered

Counter-claim.

The defendant says that :—

1.
2. } [*To be filled up in the manner exemplified in the following Forms.*]

The defendant counter-claims.

(Signed)
Delivered

Defence and Counter-claim.

Defence.

The defendant says :—

1.
2. } [*To be filled up.*]

Counter-claim.

The defendant repeats paragraph 2 of his defence, and says that :—

3.
4. } [*To be filled up.*]

The defendant counter-claims.

(Signed)
Delivered

SECTION II.

To Actions specially assigned to the Chancery Division by Section 34 of the Principal Act. Appendix C., Sect. II.

To actions for administration.

1 The defendants do not admit the plaintiff's claim.

[*or*]

The defendant A.B. admits the plaintiff's claim, but not assets.

[*or*]

The defendant C.D. admits assets, but not the plaintiff's claim.

2. The claim is barred by the Statute of Limitations.

[*State which.*]

3. Payment was made by deceased.

4. The claim is fraudulent in the following particulars:

[*Set out particulars.*]

5. The defendant is entitled to a set-off, of which the following are the particulars:

[*Set out particulars.*]

6. The claim was released by deed dated the of

7. Notice was given and assets distributed under Statute 22 & 23 Vict. c. 35, s. 29.

Particulars of the Notice.

Advertisements in the *Times* of January 1, 1880.
" *New York Herald*, February, 1881.
" *Bombay Gazette* of January 25, 1881.
[*giving the titles of the newspapers and the dates of those in which the advertisement appeared.*]

8. The personal estate of the testator is sufficient to pay the plaintiff his debt if established.

9. The defendant is not heir-at-law or devisee of the deceased.

(Signed)
Delivered

No. 1

To actions for foreclosure by mortgagee.

1. The defendant did not execute the mortgage.

2. The mortgage was not assigned to the plaintiff (*if more than one assignment is alleged, say which is denied*).

3. The debt is barred by the Statute of Limitations.

4. Payments have been made, viz.:—
10 July, 1874, £1,000.
18 October, 1875, £500.

5. The plaintiff took possession on the of and has received the rents ever since.

6. The plaintiff released the debt by deed, dated 1 June, 1882.

7. The defendant conveyed all his interest to A.B. by deed, dated 5 November, 1880.

The defendant claims:—
1. Account.
2. Re-conveyance.

(Signed)
Delivered

App. D, Sec. II.

No. 2.

1.
2.
3.
4.
5.
6. } [*As in preceding Form.*]

To same by alleged second incumbrancer, who claims priority.

7. By a deed dated 1st June, 1880, the mortgagor A.B. mortgaged the property in question to the defendant to secure £5,000 and interest at 5 per cent. per annum.

The defendant claims—

1. A declaration of priority and foreclosure (and a receiver).

(Signed)
Delivered

[*If the plaintiff claims payment of the mortgage debt, the defendant must, if he disputes his liability, show the grounds on which he does so as in other cases of debt; or he can claim indemnity against the owner of the Equity of Redemption under Order XVI., Rule* 48.]

To actions for redemption.

1. The plaintiff's right to redeem is barred by the Statute of Limitations.—[*State which.*]

2. The plaintiff assigned all interest in the property to A.B.

3. The defendant by deed, dated the day of , assigned all his interest in the mortgage debt and property comprised in the mortgage to A.B.

4. The defendant never took possession of the mortgaged property, or received the rents thereof.

[*If the defendant admits possession for a time only, he should state the time, and deny possession beyond what he admits.*]

(Signed)
Delivered

To actions for specific performance.

1. The defendant did not enter into the agreement.

2. A.B. was not the agent of the defendant [*if alleged by plaintiff*].

3. The plaintiff has not performed the following conditions.—[*Conditions.*]

4. The defendants did not—[*Alleged acts of part performance.*]

5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following matters:—[*State why.*]

6. The Statute of Frauds has not been complied with.

7. The agreement is uncertain in the following respects.—[*State them.*]

8. [*or*] The defendant has been guilty of delay;

9. [*or*] The defendant has been guilty of fraud [*or*, misrepresentation];

10. [*or*] The agreement is unfair;

11. [*or*] The agreement was entered into by mistake.

The following are particulars of (8), (9), (10), (11) [*or as the case may be*].

12. The agreement was rescinded under Conditions of Sale No. 11 [*or* by mutual agreement].

(Signed)
Delivered

[*In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on, e.g., Statute of Limitations, accord and satisfaction, release, fraud, &c.*]

App. D. Sec. III.

SECTION III.

Forms to be used in Actions within the exclusive cognizance of the Probate, Divorce, and Admiralty Division: Appendix C., Section III.

No. 1.

Interest suit.

The defendant is nephew and next of kin of the deceased, being son of G.B., the brother of the deceased, who died in his lifetime.

The defendant claims:—

That the Court pronounce that the defendant is the nephew and next of kin of the deceased, and entitled to a grant of letters of administration of the personal estate and effects of the deceased.

(Signed)

Delivered

No. 2.

Probate of will in solemn form.

1. The said will and codicil of the deceased were not duly executed according to the provisions of the statute 1 Vict. c. 26.
2. The deceased at the time the said will and codicil respectively purport to have been executed, was not of sound mind, memory, and understanding.
3. The execution of the said will and codicil was obtained by the undue influence of the plaintiff [and others acting with him, whose names are at present unknown to the defendant].
4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud, so far as is within the defendant's present knowledge, being [*state the nature of the fraud*].
5. The deceased at the time of the execution of the said will and codicil did not know and approve of the contents thereof. [*or*] of the contents of the residuary clause in the said will [*as the case may be*].
6. The deceased made his true last will, dated the 1st day of January, 1873, and thereby appointed the defendant sole executor thereof.

The defendant claims:—

1. That the Court will pronounce against the said will and codicil propounded by the plaintiff:
2. That the Court will decree probate of the will of the deceased, dated the 1st of January, 1873, in solemn form of law.

(Signed)

Delivered

No. 3.

Bottomry.

That there was no necessity to make the said bond, nor were reasonable steps taken to give notice of the intended hypothecation to the owners of the *Onward*, or the owners of the cargo.

(Signed)

Delivered

App. D. Secs. III., IV.

No. 4.

Equipment and necessaries.

1. The equipment and repairs supplied and done were not necessaries, and the claim is not a claim for necessaries within section 5 of the Admiralty Court Act, 1861.

2. The alleged necessaries were not supplied on the credit of the said vessel but upon the personal credit of J.B., who was the broker for the vessel, and upon the agreement that the plaintiffs were not to have recourse to the vessel.

(Signed)
Delivered

No. 5.

Possession.

1. The defendant did not withhold possession.
2. The defendant withheld possession on the following grounds :—

[*State them.*]

(Signed)
Delivered

No. 6.

Salvage.

1. The alleged services did not amount to salvage.
2. The defendant made tender of and has paid into Court £350.

(Signed)
Delivered

SECTION IV.

To Actions included in O. 3, r. 6, Classes A, B, C, D, E, and F.

To actions on bills of exchange, promissory notes or checks.

1. The defendant did not accept the bill.
2. The defendant did not make the note.
3. The defendant did not draw the check.
4. The defendant did not indorse to A. B.
5. The defendant [*or*, A. B.] did not indorse to the plaintiff.
6. The bill was not presented for payment.
7. The defendant had not due notice of dishonour.
8. The plaintiff was not the holder at the commencement of the action.
9. The bill was accepted [*or*, the note was made] for the accommodation of the defendant without consideration.
10. The bill was accepted for the accommodation of the drawer and indorsed to the plaintiff without consideration.
11. The bill was accepted and delivered to the drawer without consideration for the purpose of his getting it discounted for the defendant, and the drawer, in fraud of the defendant, and contrary to the said purpose, indorsed the bill to the plaintiff without consideration [*or*, with notice of the said fraud, *or*, overdue].
12. The defendant was induced to accept by the fraud of the drawer, who indorsed to the plaintiff without consideration [*or*, with notice of the fraud *or*, overdue].

Particulars of the fraud are as follows:—The drawer on or about the 15th of May, 1882, falsely and fraudulently stated to the defendant that

he had shipped 20 tons of pig iron for the defendant on board the *Ajax*, which he had not done.

13. The defendant accepted the bill [*or*, made the note] for and on account of the price of 50 tons of coal to be delivered by the plaintiff to the defendant by the 1st of May, 1882, and the plaintiff failed to deliver the goods.

14. The bill [*or*, note, *or*, check] was rendered void after issue by a material alteration, viz., by the alteration of the date from the 21st of January to the 2nd of January.

(Signed)
Delivered

1. The defendant did not order the goods.
2. The goods were not delivered to the defendant.
3. The price was not £ .
4. } Except as to £ , *same as* [*or*] { 1.
5. } { 2.
6. } { 3.
7. The defendant [*or*, A.B., the defendant's agent] satisfied the claim by payment before action to the plaintiff [*or*, to C.D., the plaintiff's agent] on the of , 18 .
8. The defendant satisfied the claim by payment after action to the plaintiff on the of , 18 .

(Signed)
Delivered

To actions for any simple contract debt other than bills, notes, or checks.

1. The bond [*or*, deed] is not the defendant's bond [*or*, deed].
2. The defendant made payment to the plaintiff on the day according to the condition of the bond.
3. The defendant made payment to the plaintiff, after the day named and before action, of the principal and interest mentioned in the bond.

(Signed)
Delivered

To actions on bonds or contracts under seal for the payment of a liquidated amount in money.

1. The principal satisfied the claim by payment before action.
2. The defendant was released by the plaintiff giving time to the principal debtor, in pursuance of a binding agreement.

(Signed)
Delivered

In actions on guaranties, whether under seal or not, where the claim against the principal is in respect of a debt or liquidated demand only. Order III., Rule 6, Class (E.).

1. As to £50 parcel of the money claimed, the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff.

Particulars are as follows:—

	£	s.	d.
1882, Jan. 25. To 20 tons of Silkstone coal at £1	20	0	0
„ Feb. 1. To 30 tons of Silkstone coal at £1	30	0	0
Total	£50	0	0

To any action of debt.

App. D. Secs. IV., V.

2. As to the whole, [*or*, as to £ , parcel of the money claimed,] the defendant made tender before action [*or*, on the day on which it fell due] of £ , and has paid the same into Court.

(Signed)
Delivered

General Defences.

Accord and satisfaction.

1. On 5th April, 1882, a brown horse was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action;

[*or*, on 5th April, 1882, an agreement between the plaintiff and the defendant, whereby it was agreed between the plaintiff and the defendant that the defendant should deliver the cargo of the *Mary* at the Surrey Commercial Docks instead of at Hull, as per charter-party of 1st March, 1882, was accepted in discharge of the alleged cause of action].

Bankruptcy, &c.

2. The defendant became bankrupt.

3. The plaintiff became bankrupt before action, and the cause of action vested in the trustees of his property.

4. The defendant was discharged under a liquidation by arrangement pursuant to the 125th section of the Bankruptcy Act, 1869.

5. The defendant compounded with his creditors under the 126th section of the Bankruptcy Act, 1869, and duly paid to the plaintiff the composition on the day appointed.

Coverture.

6. The defendant was covert at the time of making the alleged contract [*or*, contracting the alleged debt].

Infancy.

7. The defendant was an infant at the time of making the alleged contract [*or*, contracting the alleged debt].

Payment into Court.

8. The defendant as to the whole action [*or*, as to the sum of £ , parcel of the money claimed, *or*, as to the plaintiff's claim on the guarantee of the of , 18 , *or as the case may be*], has paid into Court £ , and says that sum is enough to satisfy the plaintiff's claim, [*or*, the plaintiff's claim herein pleaded to].

Release.

9. The causes of action were released by deed dated the 1st of May, 1882, between the plaintiff of the first part and the defendant of the second part.

Rescission before breach.

10. The contract was rescinded [*or*, the defendant was exonerated by the plaintiff] before breach. Particulars are as follows:—An arrangement between the plaintiff and the defendant, made verbally on the 15th of April, 1882 [*or*, by letter from the defendant to the plaintiff, and answer of the plaintiff dated the 14th and 15th of April, 1882].

Statute of Limitations.

11. The debt was barred by the Statute of Limitations [*state which*].

Statute of Frauds.

12. (17th) section of the Statute of Frauds has not been complied with.

(Signed)
Delivered

SECTION V.

To Actions for Damages for Breach of Contract or Duty. Appendix C., Sect. V.

Denials.

1. The defendant did not contract [*or*, promise, *or*, agree] as alleged.

2. The defendant did not receive the goods for the alleged purpose [*or*, on the alleged terms].

3. The defendant did not receive the plaintiff as a passenger to be carried as alleged.

4. The defendant did not [*insert breaches denied*].

5. The defendant was not ready and willing to accept and pay for the goods [*or*, to deliver the goods, *or*, *as the case may be*].

6. There was contributory negligence on part of the plaintiff. — Contributory negligence.

7. The plaintiff did not pay or tender the money for the carriage.

8. The damage or loss occurred from the inherent vice [*or*, bad condition when received] of the goods, [*or*, horse, *or*, *as the case may be*]. — Carriers.

9. The loss occurred by reason of the excepted perils mentioned in the charter-party [*or*, bill of lading], that is to say, the perils of the seas [*or*, fire, *or*, *as the case may be*].

10. The goods were above the value of £10, and consisted of articles mentioned in the first section of the Land Carriers Act (11 G. IV. & 1 Will. IV., ch. 68), that is to say, silks [*or as the case may be*], and their value and nature was not declared or any increased charge paid, &c.

11. The charter-party was cancelled pursuant to cancelling clause therein, the ships not having arrived at port of loading on or before 1st May, 1882. — Charter parties.

12. The alleged liability of the defendant had ceased by reason of cesser clause in the charter-party, the cargo shipped having been worth more at the port of discharge than the freight or demurrage.

13. The loss was not by the perils insured against. — Insurance.

14. The plaintiff was not interested in the subject-matter of the insurance.

15. The ship was not seaworthy at commencement of risk [*or*, voyage].

16. The plaintiff was not ready and willing to marry the defendant. — Breach of promise.

(Signed)
Delivered

SECTION VI.

To Actions claiming Injunctions, Damages, or Declarations of Right, founded upon Wrongs. Appendix C., Sect. VI.

1. Denial of the several acts [*or*, matters] complained of. — To all actions for wrongs.

(Signed)
Delivered

1. The goods [*or*, chattels, *or*, *as the case may be*] were not the plaintiff's. — To actions for detention or conversion of chattels.

2. The goods were detained for a lien to which the defendant was entitled. Particulars are as follows :—

1882, May 3. To carriage of the goods claimed from London to Birmingham:—

	£	*s.*	*d.*
45 tons at 2*s.*	4	10	0

(Signed)
Delivered

App. D. Sec. VI.

1. The defendant did the acts complained of in necessary self-defence.
2. There was contributory negligence on the part of the plaintiff [*or*, the plaintiff's servant].

(Signed)
Delivered

To actions for personal bodily injuries to carriages, goods, or animals by trespass or negligence.

1. The defendant did not infringe the patent.
2. The invention was not new.
3. The plaintiff was not the first or true inventor.
4. The invention was not useful.

To actions for infringement of a patent.

5. [*Denial of any other matter of fact affecting the validity of the patent.*]
6. The patent was not assigned to the plaintiff.

(Signed)
Delivered

Copyright.

(1.) The plaintiff is not the author [assignee, &c., *as the case may be*].
(2.) The book was not registered.
(3.) The defendant did not infringe.

(Signed)
Delivered

Trade mark.

(1.) The trade mark is not the plaintiff's.
(2.) The alleged trade mark is not a trade mark.
(3.) The defendant did not infringe.

(Signed)
Delivered

Light.

1. The plaintiff's lights are not ancient [*or deny his other alleged prescriptive rights*].
2. The plaintiff's lights will not be materially interfered with by the defendant's buildings.

Nuisance.

3. The defendant denies that he or his servants pollute the water [*or* do what is complained of].

[*If the defendant claims the right by prescription or otherwise to do what is complained of, he must say so, and must state the grounds of his claim*, i.e., *whether by prescription, grant, or what.*]

4. The plaintiff has been guilty of laches, of which the following are particulars:—

1870. Plaintiff's mill began to work.
1871. Plaintiff came into possession.
1883. First complaint.

5. As to the plaintiff's claim for damages, the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff. [*If other grounds are relied on, they must be stated*—e.g., *the Statute of Limitations as to past damage.*]

(Signed)
Delivered

To-actions for seduction.

1. The said A.B. was not the servant of the plaintiff.
2. The defendant did not seduce and carnally know the said A.B.

(Signed)
Delivered

SECTION VII.

To Actions for Recovery of Land. Appendix C., Sect. VII.

1. The defendant is in possession of the premises by himself or his tenant.
2. The defendant had no notice to quit.

(Signed)
Delivered

SECTION VIII.

Counter-claims.

The defendant lent £500 to the plaintiff on 1st May, 1882.
The defendant counter-claims £500.

1. The defendant has suffered damage by the plaintiff's breach of a contract for the sale and delivery by the plaintiff to the defendant of 5,000 tons of Merthyr steam coal at 18*s.* 6*d.* per ton f.o.b. at Cardiff by equal monthly deliveries over the first five months of 1882.
2. The April and May instalments were not delivered.

Particulars of the damages :—	£	*s.*	*d.*
Difference between market price in April and May, and the contract price, 2*s.* 6*d.* per ton on 2,000 tons	250	0	0

The defendant counter-claims £250.

(Signed)
Delivered

App. E. Secs. I., II.

APPENDIX E.

FORMS OF REPLY, &c., TO BE USED PURSUANT TO ORDER XIX., RULE 5.

SECTION I.

General Form.

18 . [*Here put the letter and number.*]
In the High Court of Justice,
Division.
Between , Plaintiff,
and
, Defendant.

Reply.

The plaintiff as to the defence says that—
1.
2.
The plaintiff as to the counter-claim says that—
1.
2.

(Signed)
Delivered

To actions on a guarantee to which defence raised of time given to the principal and counter-claims for non-delivery of goods.

Reply.

The plaintiff as to the defence says that—
1. He joins issue.
2. The agreement giving time to the principal expressly reserved remedies against the surety.

The plaintiff as to the counter-claim says that—
1. The defendant was not ready and willing to accept and pay for the goods.

(Signed)
Delivered

SECTION II.

Example of a Statement of Claim, Defence, and Reply.

18 . [*Here put the letter and number.*]
In the High Court of Justice,
Queen's Bench Division.
Between A.B., Plaintiff,
and
C.D., Defendant.

Statement of Claim.

The plaintiff's claim is for work done and materials provided by the plaintiff for the defendant at his request.

Particulars :—	£	s.	d.
1882. January 1 to 31 May.—To rebuilding house at Wigan, as per contract dated the 24th December, 1881	3,400	0	0
To extras as per account delivered . . .	243	0	0
	3,643	0	0
Paid on account	3,000	0	0
Balance due	£643	0	0

The plaintiff also seeks to recover interest on the above balance from the 31st May, 1882, till payment or judgment.

Place of trial, Lancashire, Northern Division.

(Signed)

Delivered the 1st of January, 1883.

[*Heading as in General Form.*]

Defence and Counter-claim.

Defence.

The defendant says that—

1. Except as to £200, parcel of the money claimed, the architect did not grant his certificate pursuant to the contract.

2. As to £200, parcel of the money claimed, the defendant brings [*or* has brought] into Court £200, and says that sum is enough to satisfy the plaintiff's claim herein pleaded to.

Counter-claim.

The defendant says that—

1. The contract contained a clause whereby it was provided that the plaintiff should complete the works by the 31st of March, 1882, or in default pay to the defendant £1 a day for every subsequent day during which the works should remain unfinished, and they so remained unfinished for sixty-one days to the 31st of May.

The defendant counter-claims £61.

(Signed)

Delivered the 22nd of January, 1883.

[*Heading as in General Form.*]

Reply.

The plaintiff says that—

1. As to the first paragraph of the defence, he joins issue.

2. As to the second paragraph thereof, the plaintiff accepts the £ in satisfaction.

The plaintiff as to the counter-claim says that—

3. The liquidated damages were waived by ordering extras and material alterations in the works.

4. The defendant waived the liquidated damages by preventing the plaintiff from having access to the premises till a week after the agreed time.

(Signed)

Delivered the 5th of February, 1883.

App. E.
Sec. III.

SECTION III.

Defence, including an Objection in Point of Law (O. 25, r. 2).

No. 1.

[*Heading.*]

Defence.

To action on a guarantee for the price of goods.

The defendant says that—

1. The goods were not supplied to E.F. on the guarantee.
2. The defendant will object that the guarantee discloses a past consideration on the face of it.

(Signed)
Delivered

No. 2.

[*Heading.*]

Defence.

To action for verbal slander actionable only by reason of special damage.

The defendant says that—

1. The defendant did not speak or publish the words.
2. The words did not refer to the plaintiff.
3. The defendant will object that the special damage stated is not sufficient in point of law to sustain the action.

(Signed)
Delivered

No. 3.

[*Heading.*]

Defence.

To action on a marine policy stated to contain clauses that the policy was to be proof of interest and without benefit of salvage.

The defendant says that—

1. The defendant did not make the policy.
2. The loss was not by the perils insured against.
3. The defendant will object that the policy was avoided by 19 Geo. II. c. 37, s. 1.

(Signed)
Delivered

APPENDIX F.

FORMS OF JUDGMENT.

No. 1.

Default of Appearance and Defence in Case of Liquidated Demand
(O. 13, r. 3 ; O. 27, rr. 2, 3).

18 . [*Here put the letter and number.*]

In the High Court of Justice,
Division.

Between A.B., Plaintiff,
and
C.D. and E.F., Defendants.

30th November, 18 .

The defendants [*or*, the defendant C.D.] not having appeared to the writ of summons herein [*or*, not having delivered any defence], it is this day adjudged that the plaintiff recover against the said defendant £ and costs, to be taxed.

[For fixed costs, see P. M. R. 18, Vol. I., Part II.]

For Land (O. 13, r. 8 ; O. 27, r. 7).

[*Heading as in Form* 1.]

The day of 18 .

No appearance having been entered [or *no statement of defence having been delivered*] *herein it is this day adjudged that the plaintiff recover possession of the land in the writ of summons* [or *Statement of Claim*] *herein mentioned and described as* (describe the property).

[Additional form in official use. No costs in default of appearance. Costs to be taxed in default of defence. See O. 13, r. 8, and O. 27, r. 7, and (nn.).]

No. 1A.

Judgment in Default against a Married Woman, alone or with Others.

[*Heading as in Form* 1.]

The defendant , not having appeared to the writ of summons herein [or not having delivered any defence], *it is this day adjudged that the plaintiff recover against the defendant , £ , and costs* [if fixed costs insert amount, if taxed, insert *to be taxed*] *such sum and costs so far as regards the defendant* [name of married woman] *to be payable out of her separate property as hereinafter mentioned and not otherwise.*

And it is ordered that execution hereon against the said defendant [name of married woman] *be limited to her separate property not subject to any restriction against anticipation (unless by reason of section* 19 *of*

App. F. Nos. 1a—4.

the Married Women's Property Act, 1882, *the property shall be liable to execution notwithstanding such restriction*).

Ante-nuptial debt.

[If for ante-nuptial debts the form should be as follows :—]

Adjudged (as above) *such sum and costs to be payable out of her separate property whether subject to any restriction against anticipation or not, and not otherwise, and execution hereon is limited to such separate property.*

Judgment against widow on contract during coverture.

In this case, if the contract was made prior to the Married Women's Property Act, 1893, *the form should run "and execution is limited to such property of the said as during her coverture was her separate property not subject to any restriction against anticipation," &c.*

[Additional forms prescribed under O. 61, r. 33. See *Scott* v. *Morley*, 20 Q. B. D. 120 ; and *Axford* v. *Reid*, 22 Q. B. D. at p. 553, and *Softlaw* v. *Welch*, (1899) 2 Q. B. 419.]

No. 2.

Interlocutory Judgment in Default of Appearance or Defence where Demand unliquidated (O. 13, r. 5).

[*Heading as in Form* 1.]

The day of , 18 .

No appearance having been entered to the writ of summons [*or*, no defence having been delivered by the defendant] herein,

It is this day adjudged that the plaintiff recover against the defendant the value of the goods [*or* damages, *or both, as the case may be*] to be assessed.

No. 3.

Judgment in default of Appearance in Action for Recovery of Land (see O. 13, r. 8).

[*Heading as in Form* 1.]

30th November, 18 .

No appearance having been entered to the writ of summons herein, it is this day adjudged that the plaintiff recover possession of the land in the indorsement on the writ described as

No. 4.

Judgment in default of Appearance and Defence after Assessment of Damages (see O. 13, r. 5).

[*Heading as in Form* 1.]

30th November, 18 .

[The defendants not having appeared to the writ of summons herein, *or*, not having delivered any defence], *the plaintiff having on the day of* , 18 , *obtained interlocutory judgment herein against the defendant in default of* [*appearance* or *defence*], and a writ of inquiry, dated 18 , having been issued directed to the sheriff of to assess the damages which the plaintiff was entitled to recover, and the said sheriff having by his return dated the 18 , returned that the said damages have been assessed at £ , it is adjudged that the plaintiff recover £ and costs, to be taxed.

[*Note.*—The words in italics have been added to, and the preceding words in brackets omitted from, the official form now in use.]

No. 4A.

Final Judgment after Assessment of Damages by an Official Referee (O. 36, rr. 57, 57*a*).

[*Heading as in Form* 1.]

The plaintiff having on the day of , 18 , *obtained interlocutory judgment herein against the defendant in default of* [*appearance* or *defence*] *for damages to be assessed, and having on the day of* , 18 , *ordered that the said damages be assessed by an official referee of the Supreme Court of Judicature, and* , *Esq., official referee, having found and assessed the said damages at* £ , *as appears by his certificate dated the Therefore it is adjudged that the plaintiff recover against the defendan* £ , *and costs to be taxed.*

[Additional form in official use.]

No. 5.

Judgment after Appearance and Order under O. 14, r. 1.

[*Heading as in Form* 1.]

The day of , 18 .

The defendant having appeared to the writ of summons herein, and the plaintiff having by the order of , dated the day of , 18 , obtained leave to sign judgment under the Rules of the Supreme Court, Order XIV., Rule 1, for [*recite order*].

It is this day adjudged that the plaintiff recover against the defendant £ [*or*, possession of the land in the indorsement on the writ described as] and costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a Taxing Officer's Certificate dated the day of , 18

No. 5A.

Judgment under O. 14, r. 1, against Married Woman.

The day of 18 .

The defendant (name of married woman) *having appeared to the writ of summons herein, and the plaintiff having by order of dated obtained leave to sign judgment under the Rules of the Supreme Court, Order XIV., r.* 1, *for* (recite order) *and such order directing that execution be limited to the separate property of the said* (name of married woman) *not subject to any restriction against anticipation (unless by reason of section* 19 *of the Married Women's Property Act,* 1882, *such property shall be liable to execution notwithstanding such restriction). It is this day adjudged that the plaintiff recover* £ , *and costs to be taxed, against the said defendant, such sum and costs to be payable out of her separate property and not otherwise. And it is ordered that execution hereon be limited to the separate property of the said defendant* (name of married woman) *not subject to any restriction against anticipation (unless by reason of section* 19 *of the Married Women's Property Act,* 1882, *the property shall be liable to execution notwithstanding such restriction). The above costs have been taxed, &c.*

[Additional form in official use. See *Scott* v. *Morley*, 20 Q. B. D. 120. For Form of judgment for ante-nuptial debt see No. 1A *supra*, and for judgment against widow for debt during coverture see *ib.*]

App. F. Nos. 6—7A.

No. 6.

Judgment at Trial by Judge without a Jury (O. 40, r. 5).

[*Heading as in Form* 1.]

[*If in Chancery Division, name of Judge.*]

This action coming on for trial [the day of and] this day before in the presence of counsel for the plaintiff and the defendants [*or, if some of the defendants do not appear*, for the plaintiff and the defendant C.D., no one appearing for the defendants E. F. and G. H., although they were duly served with notice of trial as by the affidavit of filed the day of appears,] upon hearing the probate of the will of ; the answers of the defendants C.D., E.F., and G.H. to interrogatories, the admission in writing, dated and signed by [Mr. the solicitor for] the plaintiff A.B. and by [Mr. the solicitor for] the defendant C.D., the affidavit of filed the day of , the affidavit of filed the day of the evidence of taken on their oral examination at the trial, and an exhibit marked X, being an indenture dated, &c. and made between [parties], and what was alleged by counsel on both sides: This Court doth declare, &c.

And this Court doth order and adjudge, &c.

[See also No. 7A, *infra*.]

No. 7.

Judgment after Trial with a Jury.

[*Heading as in Form* 1.]

15th November, 18 .

The action having on the 12th and 13th November, 18 been tried before the Honourable Mr. Justice with a special jury of the county of , and the jury having found [*state findings as in officer's certificate*], and the said Mr. Justice having ordered that judgment be entered for the plaintiff for £ and costs [*or as the case may be*]: Therefore it is adjudged that the plaintiff recover against the defendant £ and £ for his costs [*or* that the plaintiff recover nothing against the defendant, and that the defendant recover against the plaintiff £ for his costs of defence, *or as the case may be*].

No. 7A.

Judgment in Court for an Amount to be ascertained (O. 40, r. 3 (*a*)).

[*Heading as in Form* 1.]

(*Proceed as in preceding Forms* 6 *and* 7.)

Dated [*insert date judgment pronounced in Court*].

* * * adjudged that the plaintiff recover against the defendant such amount as shall be found due by the Official Referee [*or as the case may be*] for [*recite terms of reference*] and costs to be taxed.

[*After the official referee has certified the amount, the office copy judgment should be brought back and the following addition made to both original and copy.*]

Certificate of official referee, filed day of , 18 .

The Official Receiver having certified the amount due to the plaintiff hereunder at £ , it is adjudged that the plaintiff recover against the defendant the said sum of £ .

[The above form is no part of the Appendix to the Rules.]

No. 8.

Judgment after Trial before Referee (O. 36, pt. 8).

[*Heading as in Form* 1.]

30th November, 18 .

The action having on the 27th November, 18 been tried before X.Y., Esq., an official [*or* special] referee; and the said X.Y. having found [*or* having ordered that judgment be entered (*state substance of referee's certificate*)], it is this day adjudged that

No. 9.

Judgment after Trial of Questions of Account by Referee (Arb. Act, 1889, s. 14).

[*Heading as in Form* 1.]

The day of 18

The questions of account in this action having been referred to and he having found that there is due from the to the the sum of £ and directed that the do pay the costs of the reference,

It is this day adjudged that the recover against the said £ and costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a Taxing Officer's Certificate dated the day of 18

No. 10.

Judgment upon Motion for Judgment (O. 40).

[*Heading as in Form* 1.]

30th November, 18 .

This day, before Mr. X. of counsel for the plaintiff [*or as the case may be*], moved on behalf of the said [*state judgment moved for*], and the said Mr. X. having been heard of counsel for and Mr. Y. of counsel for the Court adjudged

No. 11.

Judgment after Trial by Court without Jury (O. 36, r. 39).

[*Heading as in Form* 1.]

Dated and entered the day of , 18 .

This action having on the day of , 18 , been tried before , and the said on the day of , 18 , having ordered that judgment be entered for the for £ .

It is this day adjudged that the recover from the £ and costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a Taxing Officer's Certificate dated the day of , 18 .

[Judgment entered the day of , 18 .]

[*Note.*—These judgments are now *dated and entered* as of the day they are pronounced in court. The words in italics are therefore substituted for the concluding words in brackets which are omitted. See O. 41, r. 3.]

App. F.
Nos. 11a—13.

No. 11A.

Judgment of Dismissal (O. 36, r. 32).

[*Heading as in Form* 1.]

Dated and entered the day of , 18 .

This action having on the day of , 18 , been called on for hearing before , and the plaintiff having failed to appear, and the defendant having thereupon become entitled under Order XXXVI., Rule 32, to judgment dismissing the action and the said having ordered that judgment be entered accordingly.

Therefore it is adjudged that this action do stand dismissed out of this Court with costs.

And it is further adjudged that the defendant recover against the plaintiff his costs to be taxed.

The above costs have been taxed, &c.

[*Note.*—As to this form and its effect see *Armour* v. *Bate* (1891), 2 Q. B. 233, cited O 36, r. 32 (n.). As to necessity for entering up the costs before proceeding on such a judgment, see *Ex p. Crump*, 7 Times Rep. 556, cited O. 42, r. 17. See also Seton, 122.]

No. 12.

Judgment in pursuance of Order (O. 41, r. 7).

[*Heading as in Form* 1.]

Pursuant to the Order of dated , 18 , whereby it was ordered , and default having been made

It is this day adjudged that the plaintiff recover against the said defendant £ and costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a Taxing Officer's Certificate dated the day of , 18 .

No. 13.

Judgment on Certificate of Registrar of County Court (O. 41, r. 7).

[*Heading as in Form* 1.]

The day of , 18 .

This action having been ordered under section 26 of the County Court Act, 1856 (19 & 20 Vict. c. 108), to be tried in the county court of and the registrar of that court having certified that the result was

It is this day adjudged that recover against £ and costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a Taxing Officer's Certificate dated the day of , 18 .

[*Note.*—This form has now become obsolete: see Cty. Ct. Act, 1888, s. 65, Vol I, Part I. (n.).]

No. 14.

Judgment for Defendant's Costs on Discontinuance (O. 26, r. 3).

[*Heading as in Form* 1.]

The day of , 18 .

The plaintiff having by a notice in writing dated the day of , 18 , wholly discontinued this action [*or* withdrawn his claim in this action for, *or* withdrawn so much of his claim in this action as relates to—*or as the case may be*].

It is this day adjudged that the defendant recover against the plaintiff costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a Taxing Officer's Certificate dated the day of 18 .

[*Cf.* Seton, p. 114.]

No. 15.

Judgment for Plaintiff's Costs after Confession of Defence (see O. 24, r. 3).

[*Heading as in Form* 1.]

The day of 18 .

The defendant in his statement of defence herein having alleged a ground of defence which arose after the commencement of this action, and the plaintiff having on the day of 18 . delivered a confession of that defence,

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed and allowed at £ as appears by a Taxing Officer's Certificate dated the day of 18 .

No. 16.

Judgment for Costs after Acceptance of Money paid into Court (O. 22, r. 7).

[*Heading as in Form* 1.]

The day of 18

The defendant having paid into court in this action the sum of £ in satisfaction of the plaintiff's claim, and the plaintiff having by his notice dated the day of 18 , accepted that sum in satisfaction of his entire cause of action, and the plaintiff's costs herein having been taxed, and the defendant not having paid the same within forty-eight hours after the said taxation,

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a Taxing Officer's Certificate dated the day of 18

App. F. Nos. 17—19.

No. 17.

Judgment where no Judgment entered at Trial by Jury (O. 40, r. 2)

[*Heading as in Form* 1.]

Dated and entered the day of , 18 .

This action having on the 18 , been tried before and a jury of the of , and the jury having found and the not having thought fit to order any judgment to be entered.

Now on motion before the Court for judgment on behalf of the the Court having

It is this day adjudged that the recover against the the sum of £ , and costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a Master's Certificate dated the day of , 18 .

[Judgment entered the day of 18 .]

[See note to No. 11, *supra*.]

No. 18.

Judgment on Motion after Trial of Issue (O. 40, r. 7).

[*Heading as in Form* 1.]

Dated and entered the day of , 18 .

The issues *or* questions of fact arising in this action [*or* cause *or* matter] by the order dated the day of ordered to be tried before having on the day of been tried before and the having found Now on motion before the Court for judgment on behalf of the , the Court having

It is this day adjudged that the recover against the the sum of £ and costs to be taxed.

The above costs have been taxed and allowed at £ , as appears by a Master's Certificate dated the day of 18 .

[Judgment entered the day of , 18 .]

[See note to No. 11, *supra*.]

[*Note*.—For forms of judgment on Bankruptcy Order of Discharge, see Judgment Table, Vol. I., Part III., No. 35; on Petition of Right, *ib*., No. 36; against Executor or Administrator, *ib*., No. 38; and for Mandatory Injunction, and Mandamus, *ib*., Nos. 39, 40.]

No. 19.

Judgment on Warrant of Attorney.

[*Heading as in Form* 1.]

The day of 18 .

The defendant having executed a Warrant of Attorney, bearing date the day of 18 , *whereby the above-named plaintiff was authorised to enter up judgment against the said defendant for* £ *and costs of suit.*

It is this day adjudged that the plaintiff recover against the said defendant £ , *and* £3 10*s*. 6*d*. *costs.*

Original Warrant of Attorney, filed the day of 18 .

[Additional form in official use.]

APPENDIX G.

PART I.

FORMS OF PRÆCIPE (O. 42, r. 12).

No. 1.

Of Fieri facias (O. 43).

18 . [*Here put the letter and number.*]

In the High Court of Justice,
Division.

Between A.B. Plaintiff,
and
C.D. and others, Defendants.

Seal a writ of *fieri facias* directed to the sheriff of , to levy against C.D. the sum of £ and interest thereon at the rate of £ per centum per annum from the day of [and £ costs] to .

Judgment [*or* order] dated day of , 18 .
[Taxing Officer's Certificate, dated day of , 18 .]

X.Y., solicitor for [*party on whose behalf writ is to issue*].

No. 2.

Of Elegit (O. 43).

[*Title as in No.* 1, *supra.*]

Seal a writ of *elegit* directed to the sheriff of , against of , in the county of , for not paying to A.B. the sum of £ , together with interest thereon, from the day of [and the sum of £ for costs], with interest thereon at the rate of £4 per centum per annum.

Judgment [*or* order] dated day of , 18 .
[Taxing Officer's Certificate, dated day of , 18 .]

X.Y., solicitor for .

No. 3.

Of Venditioni Exponas (O. 43).

[*Title as in No.* 1, *supra.*]

Seal a writ of *venditioni exponas* directed to the sheriff of to sell the goods and of C.D. taken under a writ of *fieri facias* in this action tested day of .

X.Y., solicitor for

App. G.
Nos. 4—7a.

No. 4.

Of Fieri Facias de Bonis Ecclesiasticis (O. 43, r. 5).

[*Title as in No. 1, supra.*]

Seal a writ of *fieri facias de bonis ecclesiasticis* directed to the Bishop [*or* archbishop, *as the case may be*] of , to levy against C.D. the sum of £ .

Judgment [*or* order] dated day of , 18 .
[Taxing Officer's Certificate, dated day of , 18 .]
X.Y., solicitor for

No. 5.

Of Sequestrari Facias de Bonis Ecclesiasticis (O. 43, r. 5).

[*Title as in No. 1, supra.*]

Seal a writ of *sequestrari facias* directed to the Bishop of against C.D. for not paying to A.B. the sum of £

No. 6.

Of Writ of Sequestration (O. 43).

[*Title as in No. 1, supra.*]

Seal a writ of sequestration against C.D. for not at the suit of A.B. directed to [*names of Commissioners*].

Order dated day of , 18 .

No. 7.

Of Writ of Possession (O. 47).

[*Title as in No. 1, supra.*]

Seal a writ of possession directed to the sheriff of , to deliver possession to A.B. of .

Judgment dated day of , 18

(1) "Plaintiff" or as may be.
(2) "Judgment" or "order." If for part only of premises say "described as."
(3) "£ debt, and £ cost," or as may be.
(4) If part paid, add "indorsed to levy £ and interest from," &c., as indorsed on writ.
(5) "Judgment" or "order."

No. 7A.

Of Possession and Fi. fa. combined.

[*Title as in No. 1, supra.*]

Seal a writ of possession and *fi. fa.* combined, directed to the sheriff of to deliver possession to the (1) of the land and premises in the (2) herein mentioned.

And also to levy against , of , in the county of , the sum of (3) , and interest at the rate of £4 per centum per annum on the said amount, from the day of (4)

(5) , dated the day of , 18 .

Taxing Master's Certificate dated the day of , 18 .

Dated the day of , 18 .

(Signed)
Address
Solicitor for the .

[This form has been settled by the Practice Masters under O. 61, r. 33. See O. 47, r. 3, Vol. I.]

No. 8.

Of Writ of Delivery (O. 48).

[*Title as in No.* 1, *supra.*]

Seal a writ of delivery directed to the sheriff of to make delivery to A.B. of .

No. 9.

Of Commission of Appraisement and Sale (O. 51, r. 14).

18 . [*Here put the letter and number.*]

In the High Court of Justice,
Probate Divorce and Admiralty Division.
Between A.B., Plaintiff,
and
the owners of the

I, A.B., solicitor for the [*state whether plaintiff or defendant*], pray a commission for the appraisement and sale of the [*state name and nature of property*] which was decreed by the Court on the day of , 18 .

Dated the day of , 18 .

[*To be signed by the solicitor, or by his clerk for him.*]

No. 10.

Of Writ of Attachment (O. 44).

[*Title as in No.* 1, *supra.*]

Seal in pursuance of order dated day of , an attachment directed to the sheriff of , against C.D. for not delivering to A.B. .

No. 11.

Of Distringas against Ex-Sheriff (O. 43, r. 5).

[*Title as in No.* 1, *supra.*]

Seal a writ of *distringas nuper vicecomitem quod venditioni exponat*, directed to the sheriff of , to sell the goods and of . taken under a writ of *fieri facias* in this action tested the day of , 18 .

Dated the day of , 18

(Signed)
(Address)
Solicitor for the

App. G. Nos. 12—15.

No. 12.

Of Inquiry (O. 13, r. 5).

[*Title as in No.* 1.]

Seal a writ of inquiry directed to the sheriff of to assess the damages in this action.

Judgment dated

Dated, &c. [*as in Form* 11, *supra*].

No. 13.

Of Certiorari.

[*Heading as in Form* 1.]

Seal in pursuance of order dated , a writ of *certiorari* directed to

Dated, &c. [*as in Form* 11, *supra*].

[See O. 42, r. 27 (n.), Seton, 711, and App. J., Form 10, *post*.]

No. 14.

Of Prohibition.

18 . [*Here put letter and number.*]

In the High Court of Justice.

Division.

In the matter of a certain now depending in the Court.

Between Plaintiff,

and

Defendant.

Seal a writ of prohibition directed to the judge of the above-named Court and to the above-named plaintiff to prohibit them from further proceeding in the said . 18 .

Dated, &c. [*as in Form* 11, *supra*].

[See Seton, 690, and note to O. 68, r. 2, *ante*.]

No. 15.

Of Mandamus (but see O. 53, r. 4).

[*Heading as in Form* 1.]

Seal in pursuance of order dated a writ of mandamus directed to , commanding to . Returnable .

Dated, &c. [*as in Form* 11, *supra*].

No. 16.

Of Habeas Corpus ad Testificandum.

[*Title as in No.* 1, *supra.*]

Seal in pursuance of order dated , a writ of *habeas corpus ad testificandum* directed to the , to bring before
Dated, &c. [*as in Form* 11, *supra*].

No. 17.

Of Commission to examine Witnesses (O. 37, r. 6).

[*Title as in No.* 1, *supra.*]

Seal in pursuance of order dated , a writ in the nature of a mandamus or commission to examine witnesses directed to .
Dated, &c. [*as in Form* 11, *supra*].

No. 18.

Of Commission of Partition.

[*Title as in No.* 1, *supra.*]

Seal in pursuance of order dated , a commission of partition directed to . Returnable
Dated, &c. [*as in Form* 11, *supra*].

No. 19.

Of Amended Summons (O. 28, r. 1).

[*Title as in No.* 1, *supra.*]

Amend in pursuance of order [*or* fiat] dated the writ of summons in this action by *
Dated, &c. [*as in Form* 11, *supra*].

* Set out amendments when required.

No. 20.

Of Renewed Summons (O. 8).

[*Title as in No.* 1, *supra.*]

Seal in pursuance of order dated a renewed writ of summons in this action, indorsed as follows
Dated, &c. [*as in Form* 11, *supra*].

App. G. Nos. 21—25

No. 21

Of Subpœna (O. 37, r. 26).

[*Title as in No.* 1, *supra.*]

Seal writ of subpœna , on behalf of the directed to
Returnable
Dated, &c. [*as in Form* 11, *supra*].

No. 22.

Entry of Action for Trial (O. 36, r. 20).

[*Title as in No.* 1.]

Enter this action for trial.
Dated the day of , 18 .
(Signed)
(Address)

No. 23.

Entry of Appeal (O. 58, r. 8).

[*Title as in No.* 1.]

Enter this appeal from the order [*or* judgment] of in this action, dated the day of , 18 .
Dated, &c. [*as in Form* 22, *supra*].

No. 24.

Entry for Argument generally.

[*Title as in No.* 1.]

Set down for argument the .
Dated, &c. [*as in Form* 22, *supra*].

No. 25.

Entry of Special Case (O. 34, r. 5).

[*Title as in No.* 1.]

Set down the dated the day of 18 of
Mr. the referee in this for hearing as a special case.
Dated, &c. [*as in Form* 22, *supra*].

No. 26.

Memorandum of Service of Notice of Judgment (O. 16, r. 42).

[*Heading as in Form* 1.]

Enter memorandum of service of notice of judgment made in this action, and dated the day of , 18 , on the under-mentioned persons, viz.:—

Name of Party Served.	Date of Service.

Dated, &c. [*as in Form* 22, *supra*].

No. 26A.

Certificate of Entry of Memorandum (O. 16, r. 42).

[*Heading as in Form* 1.]

These are to certify that a memorandum of service of notice of the [judgment *or* order] made in this action, dated the day of , 18 , upon the undermentioned persons, viz., , was duly entered on the day of , 18 .

[*Note.*—This form is not part of the Appendix to the Rules.]

No. 27.

Search (O. 61, r. 23).

[*Heading as in Form* 1.]

Search for .

Dated the day of , 18 .

(Signed)

(Address)

Agent for . Solicitor for .

No. 28.

Memorandum on Notice of Judgment (O. 16, r. 43)

Take notice that from the time of the service of this notice you [or *as the case may be*, the infant *or* person of unsound mind] will be bound by the proceedings in the above cause in the same manner as if you [*or* the said infant *or* person of unsound mind] had been originally made a party, and that you [*or* the said infant *or* person of unsound mind] may, on entering an appearance at the Central Office, attend the proceedings under the within-mentioned judgment [*or* order] and that you [*or* the said infant *or* person of unsound mind] may within one month after the service of this notice apply to the Court to add to the judgment [*or* order].

App. H.
No. 1.

APPENDIX H.

FORMS OF WRITS (O. 42, r. 14).

[*Note.*—As to indorsement of address of execution debtor, see O. 42, r. 13 (n.), and *Morris* v. *Salberg*, there cited.]

No. 1.

Writ of Fieri Facias (O. 43).

18 . B. No.

In the High Court of Justice.
Division.

Between A.B., Plaintiff,
and
C.D., Defendant.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith,

To the sheriff of greeting :

We command you that of the goods and chattels of C.D. in your bailiwick you cause to be made the sum of £ and also interest thereon at the rate of £ per centum per annum from the day of ,* which said sum of money and interest were lately before us in our High Court of Justice in a certain action [*or* certain actions, *as the case may be*] wherein A.B. is plaintiff and C.D. defendant [*or* in a certain matter there depending intituled "In the matter of E.F." *as the case may be*] by a judgment [*or* order, *as the case may be*] of our said court, bearing date the day of adjudged [*or* ordered, *as the case may be*] to be paid by the said C.D. to A.B., together with certain costs in the said judgment [*or* order, *as the case may be*] mentioned, and which costs have been taxed and allowed by one of the taxing officers of our said court at the sum of £ as appears by the certificate of the said taxing officer, dated the day of . And that of the goods and chattels of the said C.D. in your bailiwick you further cause to be made the said sum of £ [costs] together with interest thereon at the rate of £4 per centum per annum from the day of * and that you have that money and interest before us in our said court immediately after the execution hereof to be paid to the said A.B. in pursuance of the said judgment [*or* order, *as the case may be*]. And in what manner you shall have executed this our writ make appear to us in our said court immediately after the execution thereof. And have there then this writ.

Witness, &c.

* Day of the judgment or order, or day on which money directed to be paid, or day from which interest is directed by the order to run, as the case may be. [See now *Pyman* v. *Burt*, cited in note to Form 3, *infra*; *Boswell* v. *Coaks*, 57 L. J. Ch. 101.]

Against Executor, &c.—For form of this writ, see Execution Table "Fieri Facias," Vol. I., Part II.

No. 1A.

Writ of Fieri Facias against a Married Woman.

[*Note.*—This form is not part of the Appendix to the Rules.]

VICTORIA, &c.

We command you that of the goods and chattels of A.B. (being her separate property not subject to any restriction against anticipation as hereinafter mentioned) in your bailiwick, you cause to be made the sum of £ , *and* £ *costs, and also interest thereon at the rate of* £ *per centum per annum from the* [date of judgment] *which said sums of money and interest were lately before us in our High Court of Justice in a certain action* [or matter] *there depending wherein* [parties' names] *by a judgment of our said court bearing date the , adjudged to be paid by the said A.B. to , out of her separate property* [follow the terms of the judgment or order].

No. 2.

Fieri Facias on Order for Costs (O. 42, r. 18).

[*Title as in No.* 1.]

VICTORIA, by the grace of God, &c.

To the sheriff of greeting:

We command you, that of the goods and chattels of in your bailiwick you cause to be made the sum of £ for certain costs which by an order of our High Court of Justice dated the day of , 18 , were ordered to be paid by the said to and which have been taxed and allowed at the said sum, and interest on the said sum at the rate of £4 per centum per annum from the day of , 18 , and that you have the said sum and interest before us in our said court, immediately after the execution hereof, to be rendered to the said . And in what manner, &c. And have there then this writ.

Witness, &c.

Levy £ and £ for costs of execution, &c., and also interest on £ at £4 per centum per annum from the day of , 18 , until payment; besides sheriff's poundage, officers' fees, costs of levying, and all other legal incidental expenses.

This writ was issued by of agent for solicitor for the .

The is a and resides at in your bailiwick.

No. 3.

Writ of Elegit (O. 43).

[*Title as in No.* 1, *supra.*]

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To the sheriff of greeting:

Whereas lately in our High Court of Justice in a certain action [*or* certain actions, *as the case may be*] there depending, wherein A.B. plaintiff and C.D. defendant [*or* in a certain matter there depend-

App. H. No. 3.

ing, intituled "In the matter of E.F.," *as the case may be*] by a judgment [*or* order, *as the case may be*] of our said court made in the said action [*or* matter, *as the case may be*], and bearing date the day of , it was adjudged [*or* ordered, *as the case may be*] that C.D. should pay unto A.B. the sum of £ , together with interest thereon after the rate of £ per centum per annum from the day of , together also with certain costs as in the said judgment [*or* order, *as the case may be*] mentioned, and which costs have been taxed and allowed by one of the taxing officers of our said court, at the sum of £ as appears by the certificate of the said taxing officer, dated the day of . And afterwards the said A.B. came into our said court, and according to the statute in such case made and provided, chose to be delivered to him all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick as the said C.D., or any one in trust for him, was seised or possessed of on the day of in the year of our Lord * or at any time afterwards, or over which the said C.D., on the said day of or at any time afterwards, had any disposing power which he might without the assent of any other person exercise for his own benefit, to hold to him the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £ and £ together with interest upon the said sums at the rate of £4 per centum per annum from the said day of shall have been levied. Therefore we command you that without delay you cause to be delivered to the said A.B. by a reasonable price and extent all such lands and tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick as the said C.D., or any person or persons in trust for him, was or were seised or possessed of on the said day of * or at any time afterwards, or over which the said C.D. on the said day of *, or at any time afterwards, had any disposing power which he might without the assent of any other person exercise for his own benefit, to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns until the said two several sums, and interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us in our court aforesaid, immediately after the execution thereof, under your seals, and the seals of those by whose oath you shall make the said extent and appraisement. And have there then this writ.

Witness, &c.

* Date of judgment or order.

[This Form has been altered in accordance with the Bankruptcy Act, 1883, s. 146 (which provides that a writ of elegit shall not extend to goods and chattels); and the decision of Field, J., in *Pyman* v. *Burt*, W. N. (84) 100, that interest runs on costs from the date of the judgment. Formerly interest was calculated from the date of the certificate of taxation. (*See* (n.) "Interest" under O. 42, r. 16, and (n.) "Interest on Costs," under O. 65, r. 1.)]

No. 4.

Writ of Venditioni Exponas (O. 43, r. 5).

[*Title as in No.* 1, *supra.*]

VICTORIA, by the grace of God, &c.

To the sheriff of greeting:

Whereas by our writ we lately commanded you that of the goods and chattels of C.D. [*here recite the* fieri facias *to the end*]. And on the day of you returned to us in the Division of our High Court of Justice aforesaid, that by virtue of the said writ to you directed you had taken goods and chattels of the said C.D. to the value of the money and interest aforesaid, which said goods and chattels remained in your hands unsold for want of buyers. Therefore we, being desirous that the said A.B. should be satisfied his money and interest aforesaid, command you that you expose to sale and sell, or cause to be sold, the goods and chattels of the said C.D., by you in form aforesaid taken, and every part thereof, for the best price that can be gotten for the same, and have the money arising from such sale before us in our said court of justice immediately after the execution hereof, to be paid to the said A.B. And have there then this writ.

Witness, &c.

No. 5.

Writ of Fieri Facias de bonis Ecclesiasticis (O. 43, r. 5).

[*Title as in No.* 1, *supra.*]

VICTORIA, by the grace of God, &c. To the Right Reverend Father in God [*John*] by Divine permission Lord Bishop of greeting: We command you, that of the ecclesiastical goods of C.D., clerk in your diocese, you cause to be made £ which lately before us in our High Court of Justice in a certain action [*or* certain actions, *as the case may be*] wherein A.B. is plaintiff and C.D. is defendant [*or* in a certain matter there depending, intituled "In the matter of E.F.," *as the case may be*], by a judgment [*or* order, *as the case may be*] of our said court bearing date the day of , was adjudged [*or* ordered, *as the case may be*] to be paid by the said C.D. to the said A.B., together with interest on the said sum of £ at the rate of £ per centum per annum, from the day of and have that money, together with such interest as aforesaid, before us in our said court immediately after the execution hereof, to be rendered to the said A.B., for that our sheriff of returned to us in our said court on [*or* "at a day now past"] that the said C.D. had not any goods or chattels or any lay fee in his bailiwick whereof he could cause to be made the said £ and interest aforesaid or any part thereof, and that the said C.D. was a beneficed clerk (to wit) rector of rectory [*or* vicar of the vicarage] and parish church of in the said sheriff's county, and within your diocese [*as in the return*], and in what manner, &c. And have you there then this writ. Witness, &c.

App. H. Nos. 6—7a.

No. 6.

Writ of Fieri Facias to the Archbishop de bonis Ecclesiasticis during the Vacancy of a Bishop's See (O. 43, r. 4).

VICTORIA, by the grace of God, &c.: To the Right Reverend Father in God [*John*] by Divine Providence Lord Archbishop of Canterbury, Primate of all England and Metropolitan, greeting: We command you, that of the ecclesiastical goods of C.D., clerk in the diocese of which is within the province of Canterbury, as ordinary of that church, the episcopal see of now being vacant, you cause to be made [*&c., conclude as in the preceding Form*].

No. 7.

Writ of Sequestrari Facias de bonis Ecclesiasticis (O. 43, r. 5).

[*Title as in No.* 1, *supra.*]

VICTORIA, by the grace of God, &c.: To the Right Reverend Father in God [*John*] by Divine permission Lord Bishop of greeting: Whereas we lately commanded our sheriff of that he should omit not by reason of any liberty of his county, but that he should enter the same, and cause [to be made, *if after the return to a* fieri facias, *or* delivered, *if after the return to an* elegit, *&c., and in either case recite the former writ*]. And whereupon our said sheriff of on [*or* "at a day past"] returned to us in the division of our said Court of Justice, that the said C.D. was a beneficed clerk; that is to say, rector of the rectory [*or* vicar of the vicarage] and parish church of in the county of , and within your diocese, and that he had not any goods or chattels, or any lay fee in his bailiwick [*here follow the words of the sheriff's return*]. Therefore, we command you that you enter into the said rectory [*or* vicarage] and parish church of , and take and sequester the same into your possession, and that you hold the same in your possession until you shall have levied the said £ and interest aforesaid, of the rents, tithes, rentcharges in lieu of tithes, oblations, obventions, fruits, issues, and profits thereof, and other ecclesiastical goods in your diocese of and belonging to the said rectory [*or* vicarage] and parish church of and to the said C.D. as rector [*or* vicar] thereof to be rendered to the said A.B., and in what manner, &c. And have you there then this writ. Witness, &c.

No. 7A.

Writ of Possession and Fi. Fa.

[*Title as in No.* 1, *supra.*]

VICTORIA, by the grace of God, &c., to the sheriff of greeting: Whereas lately in our High Court of Justice by a (1) of the division of the same court, it was (2) that the (3) recover possession of all that (4) with the appurtenances in your bailiwick: Therefore we command you that you omit not by reason of any liberty of your county, but that you enter the same, and without delay you cause the said to have possession of the said land and premises with the appurtenances. And we further com-

(1) "Judgment" or "order."

(2) "Adjudged" or "ordered."

(3) "Plaintiff," or as may be.

(4) Describe premises as in judgment or order.

App. H. Nos. 7a—8a.

mand you that of the goods and chattels of the said in your bailiwick, you cause to be made the sum of £ and also interest thereon at the rate of £4 per centum per annum, from the day of , which said sum of money and interest were in the said action by the (5) to be paid by the said to together with certain costs in the said (6) mentioned, and which costs have been taxed and allowed by one of the taxing officers of our said court at the sum of £ as appears by the certificate of the said taxing officer dated the day of . And that of the goods and chattels of the said in your bailiwick you further cause to be made the said sum of £ (7) together with interest thereon at the rate of £4 per centum per annum from the day of , and that you have that money and interest before us in our said court immediately after the execution hereof to be paid to the said in pursuance of the said (8) . And in what manner you have executed this our writ make appear to us in our High Court of Justice immediately after the execution thereof. And have there then this writ.

Witness, &c.

(5) "Judgment therein adjudged" or "order dated the day of ordered."

(6) "Judgment" or "order."

(7) Costs.

(8) "Judgment" or "order."

This writ was issued by of agent for of solicitor for the who resides at .

The defendant is a and resides at in your bailiwick.

Cause possession to be delivered to the (9) of the within-mentioned premises (10) .

(9) "Plaintiff," or as may be.

(10) If for part only of premises, say "described as."

And levy £ and interest at £4 per centum per annum, from the day of 18 , and £ for costs of execution, besides poundage fees and expenses of execution.

[This form has been settled by the Practice Masters under O. 61, r. 33. See O. 47, r. 3, Vol. I.]

No. 8.

Writ of Possession (O. 47).

[*Title as in No. 1, supra.*]

VICTORIA, by the grace of God, &c., to the sheriff of greeting: Whereas lately in our High Court of Justice, by a judgment of the division of the same court [A.B. recovered] *or* [E.F. was ordered to deliver to A.B.] possession of all that with the appurtenances in your bailiwick: Therefore, we command you that you omit not by reason of any liberty of your county, but that you enter the same, and without delay you cause the said A.B. to have possession of the said land and premises with the appurtenances. And in what manner, &c. And have you there then this writ. Witness, &c.

No. 8A.

Writ of Restitution.

[*This form is not part of the Appendix to the Rules.*]

VICTORIA, by the grace of God, &c., to the sheriff of greeting: Whereas lately, before us in our High Court of Justice, Queen's Bench Division, the above-named plaintiff recovered possession of certain lands and premises in the judgment herein dated the 24th day of November, 1891, *mentioned and described as* (description of the property). *And whereas on the day of* 18 , *a writ of possession was issued pursuant to the said judgment, directing you the sheriff of our said*

App. H. Nos. 8a—10.

county of , to give possession of the said premises to the plaintiff, and possession having been given to the plaintiff accordingly. And it appearing to our said court that certain person or persons other than the said plaintiff has or have wrongfully assumed possession of the said premises, and our said court having on the day of 18 , ordered that a writ of restitution should issue in respect of the premises aforesaid. Therefore we command you that you omit not by reason of any liberty of your county, but that you enter upon the said premises, messuages, and tenements and cause the said plaintiff to have restitution thereof. And in what manner, &c. And have you there then this writ. Witness, &c.

[See *Pitcher* v. *Roe*, 9 Dowl. 971; and see O. 47, r. 2 (n.)].

No. 9.

Writ of Possession in Admiralty Action (O. 47).

18 . [*Here put the letter and number.*]

In the High Court of Justice,
Probate Divorce and Admiralty Division.

Between A.B., Plaintiff,
and
the owners of the

VICTORIA, by the grace of God, &c. To the Marshal of the Probate Divorce and Admiralty Division of the High Court of Justice, and to all and singular his substitutes, greeting: Whereas in an action of possession commenced in our said High Court on behalf of against the or vessel called the , her tackle apparel and furniture [and against intervening], the Judge has ordered possession of the said or vessel to be delivered up to the said or to his lawful attorney for his use. We therefore hereby command you to release the said vessel, her tackle apparel and furniture, from the arrest made by virtue of our warrant in that behalf, and to deliver possession thereof to the said or to his lawful attorney for his use.

Witness, &c.

Writ of possession.
Taken out by (Seal.)

No. 10.

Writ of Delivery (O. 48).

[*Title as in No.* 1, *supra.*]

VICTORIA, by the grace of God, &c. To the sheriff of greeting: We command you, that without delay you cause the following chattels, that is to say [*here enumerate the chattels recovered by the judgment or order for the return of which execution has been ordered to issue*], to be returned to A.B., which the said A.B. lately in our High Court of Justice, recovered against C.D. [*or* C.D. was ordered to deliver to the said A.B.] in an action in the division of our said court.* And we further command you, that if the said chattels cannot be found in your bailiwick, you distrain the said C.D. by all his lands and chattels in your bailiwick, so that neither the said C.D. nor anyone for him do lay hands on the same until the said C.D. render to the said A.B. the said chattels.† And in what manner, &c. And have you there then this writ. Witness, &c.

No. 11.

The like, but instead of a distress until the chattel is returned, commanding the sheriff to levy on defendant's goods the assessed value of it.

[*Proceed as in the preceding form until the* *, *and then thus :*] And we further command you, that if the said chattels cannot be found in your bailiwick, of the goods and chattels of the said C.D. in your bailiwick you cause to be made £ [*the assessed value of the chattels*].† And in what manner, &c. And have you there then this writ. Witness, &c.,

[*If in either of the preceding forms it is wished to include damages costs, and interest, proceed to the*† *and continue thus :*]

And we further command you that of the goods and chattels of the said C.D. in your bailiwick, you cause to be made the sum of £ [*damages*]. And also interest thereon at the rate of £4 per centum per annum, from the day of , which said sum of money and interest were in the said action by the judgment therein [*or* by order] dated the day of adjudged [*or* ordered] to be paid by the said C.D. to A.B. together with certain costs in the said judgment [*or* order] mentioned, and which costs have been taxed and allowed by one of the taxing officers of our said court at the sum of £ as appears by the certificate of the said taxing officer dated the day of . And that of the goods and chattels of the said C.D. in your bailiwick you further cause to be made the said sum of £ [costs], together with interest thereon at the rate of £4 per centum per annum from the day of and that you have that money and interest before us in our said court immediately after the execution hereof to be paid to the said A.B. in pursuance of the said judgment [*or* order].

And in what manner, &c.

And have you there this writ.

Witness, &c.

No. 12.

Writ of Attachment (O. 44).

[*Title as in No.* 1, *supra.*]

VICTORIA, by the grace of God, &c., to the sheriff of , greeting : We command you to attach C.D. so as to have him before us in the division of our High Court of Justice wheresoever the said court shall then be, there to answer to us, as well touching a contempt which he it is alleged hath committed against us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as our said court shall make in this behalf, and hereof fail not, and bring this writ with you. Witness, &c.

Notice to Sheriff.—*This writ, if issued for default in payment of money, is subject to the following limitation :—*

If under section 4 *of the Debtors Act*, 1869, *it does not authorise imprisonment for any longer period than* One Year.

Indorsement.—*This writ was issued by, &c., solicitor for the , who reside at , and was issued pursuant to order dated the day of* , 18 , *for such default as is therein mentioned*

App. H. Nos. 12—14.

[*being a default in payment of money under section 4 of the Debtors Act*, 1869] or [*not being a default in payment of money.*]

[*Note.*—The above "Notice to the Sheriff" (which forms a footnote to the official forms now in use) and the "Indorsement" form no part of the Appendix to the Rules, but were added to the above form under O. 61, r. 33.]

No. 13.

Writ of Sequestration (O. 43).

[*Title as in No. 1, supra.*]

VICTORIA, by the grace of God, &c.

To [*names of not less than four Commissioners*] greeting:

Whereas lately in the division of our High Court of Justice in a certain action there depending, wherein A.B. is plaintiff and C.D. and others are defendants [*or*, in a certain matter then depending, intituled "In the matter of E.F.," *as the case may be*] by a judgment [*or* order, *as the case may be*] of our said court made in the said action [*or* matter], and bearing date the day of , 18 , it was ordered that the said C.D. should [pay into court to the credit of the said action the sum of £ , *or, as the case may be*]. Know ye, therefore, that we, in confidence of your prudence and fidelity, have given, and by these presents do give to you, or any three or two of you, full power and authority to enter upon all the messuages, lands, tenements, and real estate whatsoever of the said C.D., and to collect, receive, and sequester into your hands not only all the rents and profits of his said messuages, lands, tenements, and real estate, but also all his goods, chattels, and personal estates whatsoever; and therefore we command you, any three or two of you, that you do at certain proper and convenient days and hours, go to and enter upon all the messuages, lands, tenements, and real estates of the said C.D., and that you do collect, take, and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands until the said C.D. shall [pay into court to the credit of the said action the sum of £ , *or, as the case may be*] clear his contempt, and our said court make other order to the contrary. Witness, &c.

No. 14.

Distringas against Ex-Sheriff (O. 43, r. 5).

[*Heading as in Form* 1.]

VICTORIA, by the grace of God, &c., to the sheriff of greeting:

We command you that you distrain , late sheriff of your county aforesaid by all his land and chattels in your bailiwick, so that neither he nor anyone by him do lay hands on the same until you shall have another command from us in that behalf, and that you answer to us for the issues of the same, so that the said expose for sale and sell or cause to be sold for the best price that can be gotten for the same, those goods and chattels which were of in your bailiwick, to the value

of £ ,* the sum of £ , which lately before us in our High Court of Justice in a certain action wherein plaintiff and defendant , by a† of our said court bearing date the day of , was ‡ to be paid by the said to the said , and of the sum of £ , the amount at which the costs in the said † mentioned have been taxed and allowed, and of interest on the said sum of £ at the rate of £4 per centum per annum from the day of , and on the said sum of £ at the same rate from the day of , which goods and chattels he lately took by virtue of our writ, and which remain in his hands for want of buyers, as the said late sheriff hath lately returned to us in our said court. And have the money arising from such sale before us in our said court immediately after the execution hereof, to be paid to the said . And have there then this writ.

Witness, &c.

This writ was issued by, &c.

The defendant is a , and resides at , in your bailiwick.

* "the amount of," or "part of."

† "judgment" or "order."

‡ "adjudged" or "ordered."

No. 15.

Fieri Facias on Judgment removed from Lord Mayor's Court.

[*Heading as in Form* 1.]

VICTORIA, by the grace of God, &c., to the sheriff of . greeting:

Whereas by a judgment of the Mayor's Court of London, signed on the day of , 18 , it has been adjudged that the said recover against the said £ and £ costs.

And whereas by the Mayor's Court of London Procedure Act, 1857, any writ of execution upon the final judgment obtained in the Mayor's Court is directed to be sealed in any of the Superior Courts, and it is declared that thereupon such writ of execution or judgment shall become and be of the same force, charge, and effect as a writ of execution or judgment recovered in such Superior Court, and that all the reasonable costs and charges attendant upon such sealing shall be recovered in the same manner as if the same were part of such judgment.

And whereas the costs attendant upon sealing the writ of execution herein in our High Court of Justice have been allowed at the sum of £1 6*s.* 0*d.*

Therefore we command you, that of the goods and chattels of the said in your bailiwick, you cause to be made the said several sums, with interest thereon, at the rate of £4 per centum per annum, from the said* day of , 18 , and that you have that money and interest before us in our said Court immediately after the execution hereof, to be rendered to the said . And in what manner you shall have executed this our writ make appear to us in our said court immediately after the execution hereof, and have there then this writ.

* Date of Judgment.

Witness, &c. [*Conclude as in Form* 2, *supra.*]

[The above form has been substituted by the Practice Masters for the original form.]

App. H. No. 16.

No. 16.

Commission of Appraisement and Sale (O. 51, r. 14).

[*Heading as in Form* 9.]

VICTORIA, by the grace of God, &c. To the Marshal of the Probate, Divorce and Admiralty Division of our said High Court, and to all and singular his substitutes, greeting: Whereas in an action of commenced in our said High Court on behalf of against [and against intervening], the Judge has ordered the said to be appraised and sold. We therefore hereby authorise and command you to reduce into writing an inventory of the said , and having chosen one or more experienced person or persons, to swear him or them to appraise the same according to the true value thereof, and upon a certificate of such value having been reduced into writing to cause the said to be sold by public auction for the highest price, not under the appraised value thereof, that can be obtained for the same. And we further command you, immediately upon the sale being completed, to pay the proceeds arising therefrom into the Registry of the said Division, and to file the certificate of appraisement signed by you and the appraiser or appraisers, and an account of the sale signed by you, together with this commission.

Witness, &c. (Seal.)

Commission of Appraisement and Sale.

Taken out by

APPENDIX J.

FORMS OF SUBPŒNA, &c.

No. 1.

Subpœna ad Testificandum (General Form) (O. 37, r. 27).

18 . [*Here put the letter and number*].

In the High Court of Justice.
Division.
Between , Plaintiff,
and
, Defendant.

VICTORIA, by the grace of God. &c.. to [*the names of three witnesses may be inserted*] greeting : We command you to attend before at on day the day of . 18 , at the hour of in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the plaintiff [*or* defendant].

Witness, &c.

No. 2.

Habeas Corpus ad Testificandum (O. 37, r. 27).

[*Heading as in Form* 1.]

VICTORIA, by the grace of God, &c., to the [keeper of our prison at]

We command you that you bring , who it is said is detained in our prison under your custody , before at on day the day of at the hour of in the noon, and so from day to day until the above action is tried, to give evidence on behalf of the . And that immediately after the said shall have so given his evidence you safely conduct him to the prison from which he shall have been brought.

Witness, &c.

This writ was issued, &c.

App. J. Nos. 3—6.

No. 3.

Subpœna Duces Tecum (General Form) (O. 37, r. 27).

[*Heading as in Form* 1.]

VICTORIA, by the grace of God, &c., to [*the names of three witnesses may be inserted*] greeting: We command you to attend before at , on day the day of , 18 , at the hour of in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the , and also to bring with you and produce at the time and place aforesaid [*specify documents to be produced*].

Witness, &c.

No. 4.

Subpœna ad Testificandum at Assizes (O. 37, r. 27).

[*Heading as in Form* 1.]

VICTORIA, by the grace of God, &c., to [*the names of three witnesses may be inserted*] greeting: We command you to attend before our justices assigned to take the assizes in and for the county of , to be holden at , on day the day of , 18 , at the hour of in the noon, and so from day to day during the said assizes until the above cause is tried, to give evidence on behalf of the .

Witness, &c.

No. 5.

Subpœna Duces Tecum at Assizes (O. 37, r. 27).

[*Heading as in Form* 1.]

VICTORIA, by the grace of God, &c., to [*the names of three witnesses may be inserted*] greeting: We command you to attend before our justices assigned to take the assizes in and for the county of to be holden at , on day the day of , 18 , at the hour of in the noon, and so from day to day during the said assizes until the above cause is tried, to give evidence on behalf of the , and also to bring with you and produce at the time and place aforesaid [*specify documents to be produced*].

Witness, &c.

No. 6.

Subpœna ad Testificandum at Sittings of High Court (O. 37, r. 27).

[*Heading as in Form* 1.]

VICTORIA, by the grace of God, &c., to [*the names of three witnesses may be inserted*], greeting: We command you to attend at the sittings of the division of our High Court of Justice, for , to be holden at , on day the day of , 18 , at the hour of in the noon, and so from day to day during the said sittings, until the above cause is tried, to give evidence on behalf of the .

Witness, &c.

No. 7.

Subpœna Duces Tecum at Sittings of High Court (O. 37, r. 27).

[*Heading as in Form* 1.]

VICTORIA, by the grace of God, &c., to [*the names of three witnesses may be inserted*] : We command you to attend at the sittings of the division of our High Court of Justice for , to be holden at , on day the day of , 18 , at the hour of o'clock in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the , and also to bring with you and produce at the time and place aforesaid [*specify documents to be produced*].

Witness, &c.

No. 7A.

Subpœna to Name a Solicitor (O. 7, r. 3 (n.)).

Victoria, by the grace of God, &c., to greeting: We command you that, within eight days after the service of this writ on you, exclusive of the day of such service, laying all other matters and excuses aside, you do cause an appearance to be entered for you in our High Court of Justice and name a solicitor for you in a cause wherein are plaintiffs and are defendants, and observe what our said Court shall direct in this behalf.

Witness, &c.

Appearances are to be entered at the Central Office, Royal Courts of Justice, Strand, London, and if you do not cause your appearance to be entered within the time limited by the above writ, you will be subject to such process as the Court shall award, and to such order or judgment being made against you in your absence as the Court shall think just.

[Chy. Cons. Ord. Sched. E, No. 5 ; Braithwaite's Pr. 264.]

No. 8.

Writ of Inquiry for Assessment of Damages (O. 36, rr. 56—58).

[*Heading as in Form* 1.]

VICTORIA, by the grace of God, &c., to the sheriff of , greeting:

Whereas it has been adjudged that the plaintiff recover against the defendant damages to be assessed .

Therefore we command you, that by the oaths of twelve good and lawful men of your bailiwick you inquire what damages the plaintiff is entitled to recover under the said judgment, and that forthwith thereafter you send the inquisition which you shall take thereupon to our said court, under your seal, and the seals of those by whose oaths you take the inquisition, together with this writ.

Witness, &c.

This writ was issued by, &c.

The defendant is a , and reside at , in your bailiwick.

App. J. Nos. 9—11.

No. 9.

Certiorari to County Court.

[*Heading as in Form* 1.]

VICTORIA, by the grace of God, &c., to the judge of the County Court holden at , greeting:

We, willing for certain causes to be certified of a plaint levied in our court before you against , at the suit of , command you that you send to us forthwith in the division of our High Court of Justice the said plaint with all things touching the same, as fully and entirely as the same remain in our said court before you, by whatsoever names the parties may be called therein, together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness, &c.

This writ was issued by, &c.

[See D. C. F. 1906—1920, and notes.]

No. 10.

Certiorari (General).

[*Heading as in Form* 1.]

VICTORIA, by the grace of God, &c., to the , greeting:

We, willing for certain causes to be certified of , command you that you send to us in our High Court of Justice on the day of , the aforesaid, with all things touching the same, as fully and entirely as they remain in , together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness, &c. [*Conclude as in Form* 9, *supra*].

[For practice see O. 42, r. 28 (n.).]

No. 11.

Prohibition.

[*Heading as in Form* 1.]

VICTORIA, by the grace of God, &c., to the [judge of the County Court holden at] , and to [*name of plaintiff*], of , greeting:

Whereas we have been given to understand that you the said have [entered a plaint against] C.D. in the said court, and that the said court has no jurisdiction in the said [cause] or to hear and determine the said [plaint] by reason that [*state facts showing want of jurisdiction*].

We therefore hereby prohibit you from further proceeding in the said [action] in the said court.

Witness, &c. [*Conclude as in Form* 9, *supra*].

[See note to O. 68, r. 2, *ante*, Seton, 690, and D. C. F. pp. 707, 708.]

No. 12.

Mandamus (but see O. 53, r. 4, and notes, *ante*, Vol. I.).

VICTORIA, by the grace of God, &c., to , of , greeting: Whereas by [*here recite Act of Parliament or Charter if the Act required to be done is founded on either one or the other*]. And whereas we have been given to understand and be informed in the Queen's Bench Division of Our High Court of Justice before us that [*insert necessary inducement and averments*]. And you the said were then and there required by [*insert demand*] but that you the said , well knowing the premises, but not regarding your duty in that behalf, then and there wholly neglected and refused to [*insert refusal*], nor have you or any of you at any time since , in contempt of us and to the great damage and grievance of , as we have been informed from their complaint made to us. Whereupon we being willing that due and speedy justice should be done in the premises as it is reasonable, do command you the said and every of you, firmly enjoining you that you [*insert command*], or that you show us cause to the contrary thereof, lest by your default the same complaint should be repeated to us, and how you shall have executed this our writ make known to us in our said court forthwith, then returning to us this our said writ, and this you are not to omit.

Witness, [CHARLES, BARON RUSSELL OF KILLOWEN,] the day of , in the year of our reign.

By the Court,
(Signed)

No. 13.

Commission to Examine Witnesses (O. 37, r. 6, and see D. C. F. No. 610).

[*Heading as in Form* 1.]

VICTORIA, by the grace of God, &c., to , of and of , commissioners named by and on behalf of , and to , of , and , of , commissioners named by and on behalf of the , greeting: Know ye that we in confidence of your prudence and fidelity have appointed you and by these presents give you power and authority to examine on interrogatories and *vivâ voce* as hereinafter mentioned witnesses on behalf of the said and respectively at , before you or any two of you, so that one commissioner only on each side be present and act at the examination.—And we command you as follows:

1. Both the said and the said shall be at liberty to examine on interrogatories and *vivâ voce* on the subject-matter thereof or arising out of the answers thereto such witnesses as shall be produced on their behalf with liberty to the other party to cross-examine the said witnesses on cross-interrogatories and *vivâ voce*, the party producing any witness for examination being at liberty to re-examine him *vivâ voce*; and all such additional *vivâ voce* questions, whether on examination, cross-examination, or re-examination, shall be reduced into writing, and with the answers thereto shall be returned with the said commission.

2. Not less than days before the examination of any witness on behalf of either of the said parties, notice in writing, signed by any one of you, the commissioners of the party on whose behalf the witness is to be examined, and stating the time and place of the intended examination and the names of the witnesses to be examined, shall be given to the commissioners of the other party by delivering the notice to them, or by leaving it at their usual place of abode or business, and if the commissioners or commissioner of that party neglect to attend pursuant to the notice, then one of you, the commissioners of the party on whose behalf

App. J. No. 13.

the notice is given, shall be at liberty to proceed with and take the examination of the witness or witnesses *ex parte*, and adjourn any meeting or meetings, or continue the same from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

3. In the event of any witness on his examination, cross-examination, or re-examination producing any book, document, letter, paper, or writing, and refusing for good cause to be stated in his deposition to part with the original thereof, then a copy thereof, or extract therefrom, certified by the commissioners or commissioner present and acting to be a true and correct copy or extract, shall be annexed to the witness's deposition.

4. Each witness to be examined under this commission shall be examined on oath, affirmation, or otherwise in accordance with his religion by or before the commissioners or commissioner present at the examination.

5. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and *vicâ voce* questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters to be nominated by the commissioners or commissioner present at the examination, and to be previously sworn according to his or their several religions by or before the said commissioners or commissioner truly to interpret the questions to be put to the witness and his answers thereto.

6. The depositions to be taken under this commission shall be subscribed by the witness or witnesses, and by the commissioners or commissioner who shall have taken the depositions.

7. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the Senior Master of the Supreme Court of Judicature on or before the day of enclosed in a cover under the seals or seal of the commissioners or commissioner.

8. Before you or any of you, in any manner act in the execution hereof, you shall severally take the oath hereon indorsed on the Holy Evangelists or otherwise in such other manner as is sanctioned by the form of your several religions and is considered by you respectively to be binding on your respective consciences. In the absence of any other commissioner a commissioner may himself take the oath.

And we give you or any one of you authority to administer such oath to the other or others of you.

Witness, &c. [*Conclude as in Form* 9, *supra*].

Witnesses' Oath.

You are true answer to make to all such questions as shall be asked you, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth.

So help you God.

Commissioners' Oath.

You [*or* I] shall, according to the best of your [*or* my] skill and knowledge, truly and faithfully, and without partiality to any of either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission within written. So help you [*or* me] God.

[Where there is only a single commissioner, he may be authorised to administer this oath to himself. (*Wilson* v. *De Coulon*, 22 C. D. 841.)]

Interpreter's Oath.

You shall truly and faithfully, and without partiality to any or either of the parties in this cause, and to the best of your ability, interpret and translate the oath or oaths, affirmation or affirmations which he shall administer to, and all and every the questions which shall be exhibited or put to, all and every witness and witnesses produced before and examined by the commissioners named in the commission within written, as far forth as you are directed and employed by the said commissioners, to interpret and translate the same out of the English into the language of such witness or witnesses, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language.

So help you God.

Clerk's Oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, transcribe, and engross all and every the questions which shall be exhibited or put to all and every witness and witnesses, and also the depositions of all and every such witness and witnesses produced before and examined by the said commissioners named in the commission within written, as far forth as you are directed and employed by the commissioners to take, write down, transcribe or engross the said questions and depositions. So help you God.

Direction of Interrogatories, &c., when returned by the Commissioners.

THE SENIOR MASTER OF THE SUPREME COURT OF JUDICATURE,
ROYAL COURTS OF JUSTICE, LONDON.

[Letters so addressed travel post free from any part of the United Kingdom.]

No. 14.

Commission to examine Witnesses (O. 37, Pt. II.).

18 . [*Here put the letter and number.*]

In the High Court of Justice.

Probate Divorce and Admiralty Division.

Between A.B.. Plaintiff,

and

The owners of the

VICTORIA, by the grace of God, &c., to [*state name and address of examiner or commissioner appointed*], greeting: Whereas in an action of , commenced in our said High Court of Justice on behalf of against , [and against intervening], the judge has ordered a commission to be issued for the examination of witnesses concerning the truth of the matters at issue in the said cause. We therefore hereby authorize you, upon the day of , 18 , at , in the presence of the solicitors in the said action, or in the presence of their or either of their lawfully appointed substitutes, or otherwise notwithstanding the absence of either of them, to swear the witnesses who shall be produced before you for examination in the said cause, and cause them to be examined, and their depositions to be reduced into writing. We further authorize you to adjourn (if necessary) the said examinations from time to time and from place to place, as you may find expedient. And we command you, upon the examinations being completed, to transmit the depositions and the whole proceedings had and done before you, together with this commission, to the Registry of the said Division of our said Court.

Witness, &c.

E.F., Registrar.

Commission to examine witnesses.
Taken out by

App. K.
Nos. 1, 1a.

APPENDIX K.

SUMMONSES AND ORDERS.

No. 1.

Summons (General Form). (O. 54, r. 10.)

18 . [*Here put the letter and number.*]
In the High Court of Justice,
Division.

Between , Plaintiff,
and
, Defendant.

Let all parties concerned attend the Judge [*or* Master] in Chambers, [*Central Office, Royal Courts of Justice, Strand, London*], on day, the day of , 18 , at , o'clock in the noon, on the hearing of an application on the part of .

Dated the day of , 18 .

This summons was taken out by of , solicitor for

To

[*Note.*—The words in italics have been added to the Central Office Official form.]

No. 1A.

General Form of Originating Summons (O. 54, r. 4B).

18 . [*Here put the letter and number.*]
In the High Court of Justice,
Division.

If in the Chancery Division add the name of the Judge to whom the matter is assigned.

If the question to be determined arises in the administration of an estate or a trust entitle it also in the matter of the estate or trust.

Between A.B., Plaintiff,
and
C.D., Defendant.

Let of in the county of within eight days after service of this summons on him, inclusive of the day of such service, cause an appearance to be entered for him to this summons, which is issued upon the application of of in the county of who claims to be [*state the nature of the claim*], for the determination of the following questions: [*State the questions.*]

Dated the .

This summons was taken out by , solicitor for the above-named .

The defendant may appear hereto by entering appearance either personally or by solicitor at the Central Office, Royal Courts of Justice.

Note.—If the defendant does not enter appearance within the time and at the place above mentioned, such order will be made and proceedings taken as the Judge may think just and expedient.

[R. S. C. Nov. 1893.]

No. 1B.

Originating Summons not Inter Partes (O. 54, r. 4B).

18 . [*Here put the letter and number.*]
In the High Court of Justice,
Division.
If in the Chancery Division add the name of the Judge to whom the matter is assigned.
In the matter of the Trusts of the Will of A.B. And in the matter of the Trustee Act, 1893 [*or as the case may be*].
Let of in the county of within eight days after service of this summons on him, inclusive of the day of such service, cause an appearance to be entered for him to this summons, which is issued upon the application of of in the county of for an order that [*state the object of the application*].
Dated the .
To .
This summons was taken out by of , solicitor for the above-named .
The respondent may appear hereto by entering appearance either personally or by solicitor at the Central Office, Royal Courts of Justice, London.

Note.—If the respondent does not enter appearance within the time and at the place above mentioned, such order will be made and proceedings taken as the Judge may think just and expedient.

[R. S. C. Nov. 1893.]

[*Note* Ed.—Forms 1C, 1D, 1E, originating summons and notice for service out of the jurisdiction prescribed by R. S. C., Nov., 1893, were annulled by R. S. C., 10 Jan., 1894.]

No. 1F.

Notice of Appointment to hear Originating Summons (O. 54, r. 4D).

[*Title, &c., as in Forms No.* 1A, B.]

To [*insert the name of the defendant or respondent*]. Take notice that you are required to attend the Judge [*or* Master] in Chambers [*or* at the Chambers of Mr. Justice ,] [*or* at the Admiralty Registry] at the Royal Courts of Justice on day of 18 , at o'clock in the noon, for the hearing of the originating summons issued herein on the day of 18 , and that if you do not attend in person or by solicitor at the time and place mentioned, such order will be made and proceedings taken as the Judge [*or* Master] may think just and expedient.

(Signed)
Solicitor for the Plaintiff [*or* Applicant].

[*Note.*—Prescribed by R. S. C. Nov. 1893. As to use of this form where defendant or respondent makes default of appearance, see O. 13, r. 15 (nn.), *ante*, Vol. I.]

App. K. Nos. 1g—2.

No. 1G.

Originating Summons under O. 54, r. 4f.

18 .

In the High Court of Justice,
Division.

(*If in the Chancery Division add the name of the Judge to whom the matter is assigned.*)

In the matter of A.B. a Solicitor.

Let A.B. of attend [if in the Chancery Division, at the Chambers of Mr. Justice , at the time specified in the margin hereof] [if in Queen's Bench, the Judge [*or* Master] in Chambers, Central Office, Royal Courts of Justice, Strand, London] [if in Probate Division, at the Probate Registry or if in Admiralty Division, at the Admiralty Registry], on the day of , 18 , at o'clock, in the noon, on the hearing of an application on the part of [State relief sought].

Note.—It will not be necessary for you to enter an appearance in the Central Office, but if you do not attend either in person or by your solicitor, at the time and place above mentioned [or at the time mentioned in the indorsement hereon], such order will be made and proceedings taken as the Judge may think just and expedient.

[R. S. C. August, 1894.]

No. 1H.

Form of Ex Parte Originating Summons.

189 . B. No. .

In the High Court of Justice,
Chancery Division.

In the matter of A.B. an infant [*or*, *as may be*],

Let all parties concerned attend at the Chambers of Mr. Justice , at the Royal Courts of Justice, Strand, Middlesex, at the time specified in the margin hereof, on the hearing of an application on the part of the above named A.B., an infant, by C.D. his next friend, that, &c.

This summons was taken out by of in the county of [agents for , of in the county of], solicitors for the applicant.

[R. S. C. August, 1894.]

No. 2.

Order (General Form). (O. 54, r. 29.)

[*Heading as in Form* 1.]

* Insert name of judge or master.

*Judge [*or* Master] in Chambers.

Between

Upon hearing and upon reading the affidavit of filed the day of , 18 , and

It is ordered , and that the costs of this application be

Dated the day of , 18 .

[See Seton, p. 272.]

No. 3A.

Summons for Directions pursuant to O. 30 (Ordinary List).

[*Heading as in Form* 1.]

Let all the parties concerned attend Master () in Chambers at the Central Office, Royal Courts of Justice, Strand, London, on day the day of 18 , at o'clock in the noon, on the hearing of an application on the part of to show cause why an order for directions should not be made in this action as follows :—

Pleadings.

Particulars. [*That the deliver within days particulars of and that in default all further proceedings in this action be stayed until such particulars are delivered* [*or, that the defendant be precluded from giving evidence in support thereof on the trial of the action*] *and that the have days to deliver his after delivery of such particulars.*]

Admissions.

Discovery. [*That the file an affidavit of documents in ten days.*]

Interrogatories. [*For leave to interrogate the Answers to be filed within ten days.*]

Inspection of documents.

Inspection of real or personal property.

Commissions.

Examination of witnesses.

Place of trial.

Mode of trial.

Any other interlocutory matter or thing.

Dated the day of .

This summons was taken out by , solicitor for .

To .

[*Note.*—Form 3 of App. K. is annulled by r. 31 of R. S. C. Nov. 1893. This form was altered after the issue of the rules in order to make it correspond with the form of order for directions, *q.v.*, *infra*, No. 4A.]

No. 4A.

Order for Directions pursuant to Order 30 (Ordinary List).

[*Note.*—This statutory form is not used. See the official draft form of order for directions in ordinary use in lieu of this form, No. 4B, *infra*.]

[*Heading as in Form* 1.]

Upon hearing *the solicitors on both sides* , and upon reading *the affidavit of filed herein* the following directions are hereby given :—

Pleadings. *None.*

Particulars. *Defendant in a week to give particulars of payment by him to the deceased.*

App. K. Nos. 4a—4c.

Admissions.	*That the plaintiff is executor, and that the goods were supplied by deceased to the defendant.*
Discovery.	*Defendant in a week to produce letter of* 1st *January*, 1889.
Interrogatories.	*Plaintiff may interrogate as to payment only: interrogatories to be initialled by me.*
Inspection of documents.	*Plaintiff undertakes to produce pass-book of deceased at trial.*
Inspection of real or personal property.	*None.*
Commissions.	*None.*
Examination of witnesses.	*John Smith to be examined at Cardiff within a fortnight before examiner of the Court or special examiner to be named by parties, or in default by me.*
Place of trial.	*Swansea.*
Mode of trial.	*Judge.*
Any other interlocutory matter or thing.	*Notice of trial to be given at once by plaintiff.*

[*Note.*—Form 4 of App. K. is annulled by r. 31 of R. S. C. Nov. 1893.]

No. 4B.

Order for Directions.

[*Official Form.*]

Upon hearing the solicitors on both sides, the following directions are hereby given, and it is ordered

That there be pleadings in the action.

That the deliver to the an account in writing of the particulars of and that, unless such particulars be delivered within days from the date of this order, all further proceedings be stayed until the delivery thereof, and that the defendant have days after delivery of the said particulars to deliver his defence.

That the plaintiff and defendant do, respectively, within ten days from the date of this order, answer on affidavit stating what documents are or have been in their possession or power relating to the matters in question in this action.

That the plaintiff be at liberty to deliver to the defendant, and that the defendant be at liberty to deliver to the plaintiff, interrogatories in writing as approved by the Master, and that the said interrogatories be answered as prescribed by O. 31, rr. 8 and 26 of the R. S. C.

That the action be tried at .

That the action be tried with .

Dated the day of , 189 .

No 4C.

Summons for Directions (Commercial List).

[*Official Form.*]

Let all parties concerned attend the Judge in Chambers, at the Central Office, Royal Courts of Justice, Strand, London, on day

the day of , 189 , at 10.30 of the clock in the forenoon on the hearing of an application on the part of the for an order for directions, as follows :—

That the action be transferred to the commercial list.

That points of claim be delivered by the plaintiff in days.

That points of defence be delivered by the defendant in days afterwards.

That lists of documents be exchanged between the parties in seven days and inspection be given within three days afterwards.

That the action be tried with [or without] a special jury.

That the date of trial be fixed for

That the costs of this application be costs in the cause.

Dated the day of , 189 .

This summons was taken out by of solicitor for .

No. 4D.

Order for Directions (Commercial List).

[*Official Form.*]

Upon hearing on both sides,

It is ordered :—

That the action be transferred to the commercial list.

That points of claim be delivered by the plaintiff in days.

That points of defence be delivered by the defendant in days.

That lists of documents be exchanged between the parties in seven days and inspection be given in three days afterwards.

That the action be tried with [or without] a special jury.

That the date of trial be fixed for

That the costs of this application be costs in the cause.

Dated the day of 189 .

No. 4E.

Summons for Third Party Directions (O. 16, r. 52).

Let all parties concerned attend the Master in Chambers, at the Central Office, Royal Courts of Justice, Strand, London, on day the day of , 189 , at o'clock in the noon on the hearing of an application on the part of for an order for third party directions, as follows :—that the defendant deliver a statement of his claim to the said third party within days from this date, who shall plead thereto within days. And that the said third party be at liberty to appear at the trial of this action, and take such part as the Judge shall direct, and be bound by the result of the trial.

And that the question of the liability of the said third party to indemnify the defendant be tried at the trial of this action, but subsequent thereto.

Dated the day of , 189 .

This summons was taken out by of , solicitor for .

To .

No. 4F.

Order for Third Party Directions (O. 16, r. 52).

Upon hearing the solicitors for the plaintiff, defendant, and third party,

It is ordered that the defendant deliver a statement of his claim to the said third party within days from this date, who shall plead thereto within days. And that the said third party be at liberty to appear at the trial of this action, and take such part as the Judge shall direct, and be bound by the result of the trial. And that the

App. K. Nos. 4f.—8.

question of the liability of the said third party to indemnify the defendant be tried at the trial of this action, but subsequent thereto.

And that the costs of this application be .

Dated the day of , 189 .

No. 5.

Order for Time (but see O. 52, r. 14).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the shall have time, and that the costs of this application be .

Dated the day of , 18 .

[See Seton, 46, Form 2.]

No. 6.

Order under Order 14, No. 1.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the plaintiff may sign final judgment in this action for the amount indorsed on the writ, with interest, if any, [*or* possession of the land in the indorsement of the writ described as] and costs to be taxed [and that the costs of this application be].

Dated the day of , 18 .

[*Note.*—The concluding words in brackets are omitted from the form now in official use.]

No. 7.

Order under Order 14, No. 2.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the defendant be at liberty to defend this action [by delivering a defence within days after service of this order] and that the costs of this application be .

Dated the day of , 18 .

[*Note.*—The words in brackets are omitted from the form now in official use. See, as to this, *Egerton* v. *Anderson*, W. N. (84) 95.]

No. 8.

Order under Order 14, No. 3.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that if the defendant pay into Court within a week from the date of this order the sum of £ , he be at liberty to defend this action [by delivering a defence within days after service of this order], but that if that sum be not so paid, the plaintiff be at liberty to sign final judgment for the amount indorsed on the writ of summons, with interest, if any, and costs, and that in either event the costs of this application be .

Dated the day of , 18 .

[*Note.*—The words in brackets are now omitted; see note to Form 7.]

No. 9.

Order under Order 14, No. 4.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that if the defendant pay into Court within a week from the date of this order the sum of £ he be at liberty to defend this action as to the whole of the plaintiff's claim.

And it is ordered that if that sum be not so paid, the plaintiff be at liberty to sign judgment for that sum, and the defendant be at liberty to defend this action as to the residue of the plaintiff's claim [and it is ordered that in either event the defence be delivered within days after service of this order] and that the costs of this application be .

Dated the day of , 18 .

[*Note.*—The words in brackets are now omitted; see note to Form 7.]

No. 9A.

Order under Order 14, No. 5.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and .

It is ordered that if the defendant do not pay to the plaintiff's solicitor within a week from the date of this order, the sum of £ , the plaintiff be at liberty to sign judgment for the same.

And it is further ordered that the said defendant be at liberty to defend this action as to the residue of the plaintiff's claim, and that the costs of this application be costs in the action.

Dated the day of , 18 .

[Additional form prescribed for official use under O. 61, r. 33.]

No. 9B.

Order under Order 14, No. 6.

(Against a Married Woman and Others.)

[*Heading as in Form* 1.]

Upon hearing the solicitors on both sides and reading the affidavit of :

It is ordered that the plaintiff be at liberty to sign final judgment in this action for the amount endorsed on the writ, with interest (if any) and costs to be taxed, and that as regards the defendant A.B. (the married woman) *such sum and costs be payable out of her separate property as hereinafter mentioned and not otherwise, and it is ordered that as regards the said defendant* A.B. (the married woman) *execution on such judgment be limited to her separate estate not subject to any restriction against anticipation (unless by reason of section 19 of the Married Women's Property Act, 1882, the property shall be liable to such execution notwithstanding such restriction).*

Dated the day of , 18 .

[Additional form prescribed for official use under O. 61, r. 33.]

App. K.
Nos. 9c—12.

No. 9c.

Order under Order 14, No. 7.

(Action on Bill of Costs.)

[*Heading as in Form* 1.]

Upon hearing the solicitors on both sides and reading the affidavit of :

It is ordered that the bill of costs on which this action is brought be referred to the Master to be taxed, pursuant to the statute 6 & 7 Victoria, cap. 73, and that the plaintiff give credit at the time of taxation for all sums of money received by him from or on account of the defendant, and that the plaintiff be at liberty to sign judgment for the amount, if any, found due to him by the Master's allocatur on the said taxation and costs of action to be taxed.

Dated the day of , 18 .

[Additional form prescribed for official use under O. 61, r. 33.]

No. 10.

Order to Amend (O. 28, r. 1).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the plaintiff be at liberty to amend the writ of summons in this action by , and that the costs of this application be .

Dated the day of 18 .

[See Seton, p. 41.]

No. 11.

Order for Particulars (Partnership) (O. 19, r. 7).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the furnish the with a statement in writing, verified by affidavit, setting forth the names of the persons constituting the members or co-partners of their firm, pursuant to the Rules of the Supreme Court, 1883, O. XVI., R. 14, and that the costs of this application be .

Dated the day of , 18 .

No. 12.

Order for Particulars (General) (O. 19, r. 7).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the plaintiff deliver to the defendant an account in writing of the particulars of the plaintiff's claim in this

action, and that unless such particulars be delivered within days from the date of this order, all further proceedings be stayed until the delivery thereof, and that the costs of this application be .

Dated the day of , 18 .

No. 12A.

Order for Particulars of Counterclaim (O. 19, r. 7).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and .

It is ordered that the defendant do within days deliver to the plaintiff's solicitor or agent particulars of the said defendant's set-off (Counterclaim), that in default the said defendant be precluded from giving evidence in support thereof on the trial of this action, and that the costs of this application be .

Dated the day of , 18 .

[Additional form prescribed for official use under O. 61, r. 33.]

No. 13.

Order for Particulars (Accident Case) (O. 19, r. 7).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the plaintiff deliver to the defendant an account in writing of the particulars of the injuries mentioned in the statement of claim, together with the time and place of the accident, and the particular acts of negligence complained of, and that unless such particulars be delivered within days from the date of this order all further proceedings in this action be stayed until the delivery thereof, and that the costs of this application be .

Dated the day of , 18 .

No. 14.

Order to Discharge or Vary on Application by Third Party.
(O. 16, Pt. VI.)

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the order of in this action, dated the day of , 18 , be discharged [*or* varied by], and that the costs of this application be .

Dated the day of , 18 .

App. K. Nos. 15—18.

No. 15.

Order to Dismiss for want of Prosecution (O. 27, r. 1)

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that this action be, for want of prosecution, dismissed with costs to be taxed and paid to the defendant by the plaintiff, and that the costs of this application be .

Dated the day of , 18 .

[See Forms in Seton, pp. 118–120.]

No. 16.

Order for Delivery of Interrogatories (O. 31, r. 1).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the be at liberty to deliver to the interrogatories in writing, and that the said do answer the interrogatories as prescribed by Order XXXI. Rules 8 and 26 of the Rules of the Supreme Court, and that the costs of this application be .

Dated the day of , 18 .

[See Seton, p. 45. See also note to following form.]

No. 17.

Order for Affidavit as to Documents (O. 31, r. 12).

[*Heading as in Form* 1.]

Upon hearing

It is ordered that the do, within days from the date of this order, answer on affidavit stating what documents are or have been in possession or power relating to the matters in question in this action, and that the costs of this application be .

Dated the day of , 18 .

[*Note.*—The form in official use combines this and the preceding form.]

No. 18.

Order to Produce Documents for Inspection (O. 31, r. 14)

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the do, at all seasonable times, on reasonable notice, produce at [*insert place of inspection*], situate at , the following documents, namely , and that the be at liberty to inspect and peruse the documents so produced, and to take copies and abstracts thereof and extracts therefrom, at expense, and that in the meantime all further proceedings be stayed, and that the costs of this application be .

Dated the day of , 18

[See Seton, pp. 47–52.]

No. 19.

Order for Production (Underwriters).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the do produce and show to the upon oath all insurance slips, policies, letters of instruction, or other orders for effecting such slips or policies, or relating to the insurance or the subject-matter of the insurance on the ship , or the cargo on board thereof, or the freight thereby, and also all documents relating to the sailing or alleged loss of the said ship , the cargo on board thereof, and the freight thereby, and all letters and correspondence with any person or persons in any manner relating to the effecting the insurance on the said ship, the cargo on board thereof, or the freight thereby, or any other insurance whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby on the voyage insured by, or relating to the policy sued upon in this action, or any other policy whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby on the same voyage. Also all correspondence between the captain or agent of the vessel and any other person, with the owner or any person or persons previous to the commencement of or during the voyage upon which the alleged loss happened. Also all protests, surveys, log-books, charter-parties, tradesmen's bills for repairs, average statements, letters, invoices, bills of parcels, bills of lading, manifests, accounts, accounts-current, accounts-sales, bills of exchange, receipts, vouchers, books, documents, correspondence, papers, and writings, (whether originals, duplicates, or copies respectively,) which are now in the custody, possession, or power of the , his brokers, solicitors, or agents, in any way relating or referring to the matters in question in this action, with liberty for the to inspect and take copies of or extracts from the same or any of them, and that in the meantime all further proceedings be stayed, and that the costs of this application be .

Dated the day of , 18 .

[See W. N. (81) 65; and see O. 31. r. 1 (n.) "Marine Insurance Actions." Where the master added the words "that in the like manner the plaintiffs and the said other persons as aforesaid do account for all such documents as were once, but are not now, in their or any of their possession, custody, or power," it was held that they were rightly added (*China Transpacific, &c., Co.* v. *Commercial, &c., Co.*, 8 Q. B. D. 142.]

No. 20.

Order for Service out of Jurisdiction (O. 11).

In the High Court of Justice,
Division.

The Hon. Mr. Justice , Judge in Chambers.

In the matter of the Judicature Acts, 1873—1875, *and in the matter of an intended action.*

Between , Plaintiff,
and
, Defendant.

Upon [hearing and upon] reading the affidavit of filed herein,

App. K. Nos. 20—23.

It is ordered that the *intended* plaintiff be at liberty to issue a writ [for service out of the jurisdiction] *of summons against the intended defendant.*

And it is further ordered that *the said intended plaintiff be at liberty to serve* [*If a foreigner in a foreign country insert "Notice of"*] *the said writ at* [*Here insert country or place within the limits of which the service is to be made*], *or elsewhere in the* , *and that* the time for appearance to the said writ *by the said intended defendant* be within after the service [thereof] *of the said* [*Here insert "Writ" or "Notice of" as may be required.*]

Dated the day of , 18 .

[See Seton, 11, 12, and Table of Times for Appearance, Vol. I., Part II.]

[*Note.*—In the official form now in use the words in brackets in the first paragraph and the word "thereof" in the second paragraph, are omitted, and the words in italics are added.]

No. 21.

Order for Substituted Service (O. 10).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that service of a copy of this order, and of a copy of the writ of summons in this action, by sending the same by a prepaid post letter, addressed to the defendant at , shall be good and sufficient service of the writ.

Dated the day of , 18 .

[See Seton, p. 9.]

No. 22.

Order for Renewal of Writ (O. 8, r. 1).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the writ in this action be renewed for six months from the date of its renewal, pursuant to the Rules of the Supreme Court, Order VIII. Rule 1.

Dated the day of , 18 .

[See Seton, p. 7.]

No. 23.

Order for Issue of Notice Claiming Contribution (O. 16, r. 48).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the defendant be at liberty to issue a notice claiming over against , pursuant to the Rules of the Supreme Court, Order XVI. Rule 48.

Dated the day of , 18

[See Seton, p. 12, No. 10.]

App. K.
No. 24.

No. 24.

Order of Reference (Arbitration Act, 1889, s. 14).

[*Heading as in Form* 1.]

Upon hearing and by consent
It is ordered as follows:

1. [*State matters to be referred*] shall be referred to the award of

2. The arbitrator shall have all the powers as to certifying and amending of a Judge of the High Court of Justice.

3. The arbitrator shall make and publish his award in writing of and concerning the matters referred, ready to be delivered to the parties in difference, or such of them as require the same (or their respective personal representatives, if either of the said parties die before the making of the award), on or before the next, or on or before such further day as the arbitrator may from time to time appoint and signify in writing signed by him and indorsed on this order.

4. The said parties shall in all things abide by and obey the award so to be made.

5. The costs of the said cause and the costs of the reference and award shall be

6. The arbitrator may (if he think fit) examine the said parties to his cause, and their respective witnesses, upon oath or affirmation.

7. The said parties shall produce before the arbitrator all books, deeds, papers, and writings in their or either of their custody or power relating to the matters in difference.

8. Neither the plaintiff nor the defendant shall bring or prosecute any action against the arbitrator of or concerning the matters so to be referred.

9. If either party by affected delay or otherwise wilfully prevent the said arbitrator from making an award, he or they shall pay such costs to the other as may think reasonable and just.

10. In the event of either of the said parties disputing the validity of the said award, or moving the to set it aside, the said shall have power to remit the matters hereby referred or any or either of them to the reconsideration of the arbitrator.

11. In the event of the arbitrator declining to act or dying before he has made his award, the said parties may, or, if they cannot agree, the Master may, on application by either side, appoint a new arbitrator.

*12. Unless restrained by any order of the Court or a Judge, the party or parties in whose favour the award shall be made shall be at liberty days after service of a copy of the award on the solicitor or agent of the other party to sign final judgment in accordance with the award, and for all costs that he or they may be entitled to under this order, and under the award, together with the costs of the said judgment.

Dated the day of , 18 .

[See D. C. F. pp. 925–932; and Seton, p. 351, Forms 1, 2.]

* As to present necessity for this paragraph, see O. 40, r. 2.

App. K. Nos. 25—26a.

No. 25.

Order for Examination of Witnesses before Arbitrator (O. 37, r. 5).

[*Note.*—This form is now obsolete; see note to No. 26, *infra.*]

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that attend before , the arbitrator herein, on the days of , 18 , at , and then and there submit to be examined on oath or affirmation on behalf of the , touching the matters referred to the said arbitrator.

Dated the day of , 18 .

[See note to next form.]

No. 26.

Order for Examination of Witnesses and Production of Documents. (O. 37, r. 7.)

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that attend before , the arbitrator herein, on the days of 18 , at , and then and there submit to be examined on oath or affirmation on behalf of the , touching the matters referred to the said arbitrator.

And it is further ordered that the said do at the time and place aforesaid produce and deliver to the said arbitrator the papers, documents, and writings hereafter mentioned, that is to say [*specify documents to be produced*].

Dated the day of , 18 .

[*Note.*—Form No. 25 and this form (No. 26) are now obsolete, the attendance of witnesses before an arbitrator or before an official or special referee being now enforced by subpœna, see O. 36, rr. 49, 55C, and P. M. R. 14, Vol. I., Part II.]

No. 26A.

Order for Subpœna to Issue under Solicitors Act, 1888 (P. M. R. 14, Vol. I., Part II.).

In the matter of the Solicitors Act, 1888.

And in the matter of A.B., one of the solicitors of the Supreme Court.

Upon hearing the solicitors for the applicant C.D., and reading the authority of the committee appointed under the above-mentioned Act.

It is ordered that the applicant be at liberty to issue a subpœna requiring the attendance of , before the said committee at the Hall of the Incorporated Law Society, Chancery Lane, London, on the day of , 18 , at o'clock in the noon, and so from day to day until the application in the above matter is heard, to give evidence on behalf of the said applicant.

Dated, &c.

[Additional form prescribed under O. 61, r. 33. For practice see O. 37, r. 20, (n.) "Enforcing Attendance of Witnesses."]

No. 27.

Order charging Stock—Nisi (O. 46, r. 1).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , whereby it appears *that the plaintiff recovered a judgment against the defendant on the day of , 18 , for the sum of £ and £ costs, that the said defendant is still indebted to the plaintiff in the said sums so recovered, and that there is standing in* .

It is ordered that unless sufficient cause be shown to the contrary before *the Judge in Chambers, Central Office, Royal Courts of Justice, Strand, London*, on day the day of , 18 , at o'clock in the forenoon, the defendant's interest in the so standing as aforesaid shall, and that it in the meantime do, stand charged with the payment of the above-mentioned amount due on the said judgment.

Dated the day of , 18 .

[See Forms in Seton, pp. 423-425.]

[*Note.*—The original form has been amended in pursuance of O. 61, r. 33, by the addition of the words in italics.

Where the order is against a fund standing in the name of a person of unsound mind, the order should not omit to state what portion of the fund shall stand charged (*Horne v. Pountain*, 23 Q. B. D. 264).]

No. 28.

Order charging Stock—Absolute (O. 46, r. 1)

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and an order *nisi* made herein on the day of , 18 . reciting the affidavit of , whereby it appeared that *the plaintiff recovered a judgment against the defendant on the day of , 18 , for the sum of £ and £ costs, that the said defendant is still indebted to the plaintiff in the said sums so recovered, and that there is standing in* .

It is ordered that the defendant's interest in the so standing as aforesaid stand charged with the payment of the above-mentioned amount due on the said judgment.

Dated the day of , 18 .

[*Note.*—The original form has been amended in pursuance of O. 61, r. 33, by the addition of the words in italics.

Where the order is against a person of unsound mind, see note to preceding form.]

No. 29.

Charging Order. Solicitor's Costs.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the said the solicitor for the in this

App. K. Nos. 29—31.

action, shall have a charge upon for his costs, charges, and expenses of and in reference to this action.

Dated the day of , 18 .

[See Forms and Notes in Seton, 4th ed., pp. 641-645; and notes, "Solicitors," *post*, Part IV.]

No. 30.

Order to remove Judgment from County Court.

18 . [*Here put the letter and number.*]

In the High Court of Justice.

Division.

Y.

Master in Chambers.

In the matter of a plaint in the County Court of , holden at , wherein , plaintiff, and , defendant.

Upon reading the affidavit of , filed the day of , 18 , and , and the certified copy of the judgment in the plaint above mentioned,

It is ordered that a writ of certiorari issue to remove the said judgment from the above-named County Court into the Division of the High Court of Justice.

Dated the day of 18 .

No. 31.

Order for Arrest (capias) under Debtors Act (O. 69, r. 1).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the defendant be arrested and imprisoned for the term of from the date of his arrest, including the day of such date, unless and until he shall sooner deposit in Court the sum of £ , or give to the plaintiff a bond executed by him and two sufficient sureties in the penalty of £ , or some other security satisfactory to the plaintiff, that .

And it is further ordered that the sheriff of do within one calendar month from the date hereof, including the day of such date, and not afterwards, take the defendant for the purpose aforesaid if he shall be found in the said sheriff's bailiwick.

Dated the day of , 18 .

[See D. C. F. pp. 713-6.]

No. 32.

Order of Reference under S. 13 of Arbitration Act, 1889.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the following question arising in this action, namely, be referred for inquiry and report to . under s. 13 of the Arbitration Act, 1889, and that the costs of this application be

Dated the day of . 18 .

[Form No. 32 of App. to R. S. C. 1883, as amended by R. S. C. Dec. 1889.]

[See *Wenlock (Baroness)* v. *River Dee Co.*, 19 Q. B. D. 155.]

No. 33.

Order of Reference under S. 14 of the Arbitration Act, 1889.

[*Heading as in Form* 1.]

[This form is not now in use; see note and new form, *infra*.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the cause (or matter, or the [*state whether all or some, and if so which, of the questions are to be tried*] in this cause or matter) be tried by . who shall have all the powers as to certifying and amending of a Judge of the High Court of Justice, and shall make his report of and concerning the matters ordered to be tried as aforesaid pursuant to the statute [*or* direct judgment to be entered, and otherwise deal with the whole action pursuant to Order XXXVI., Rule 50].

And it is further ordered that the said may, if he think fit, examine the parties to this action, and their respective witnesses, upon oath or affirmation, and that the said parties shall produce before the said all books, deeds, papers, and writings in their or either of their custody or power relating to the matters so ordered to be tried.

And it is further ordered that neither the plaintiff nor the defendant shall bring or prosecute any action against the said referee, or against each other, of or concerning the matters so ordered to be tried, and that if either party by affected delay or otherwise wilfully prevent the said referee from making his report, he or they shall pay such costs to the other as the Court or a Judge may think reasonable and just.

And it is further ordered that, in the event of the said declining to act, or dying before he has made his report, the said parties may, or if they cannot agree, one of the Judges of the High Court may, upon application by either party, appoint a new referee.

And it is ordered that the costs of this application be .

Dated the day of , 18 .

[See *Dawes* v. *Fountaine*, 31 Sol. J. 231, as to the form which this form has superseded by virtue of R. S. C. Dec. 1889. This form, however, is not now in use, having been practically superseded by the following additional form prescribed under O. 61, r. 33.]

App. K.
Nos. 33a—35.

No. 33A.

Order of Reference under S. 14 of the Arbitration Act, 1889.

Upon hearing the solicitors on both sides , and upon reading the affidavit of , filed herein .

It is ordered that the whole of this cause be tried before an official referee who shall have all the powers of certifying and amending of a Judge of the High Court of Justice, and shall direct judgment to be entered and otherwise deal with the whole action pursuant to Order XXXVI.

Dated the day of , 18 .

[Additional form prescribed under O. 61, r. 33. See Seton, 363.]

No. 34.

Order of Reference to Master.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that this action [*or* the matters of account in this action, *or* the following questions in this action being matters of account, namely, *stating them*] be referred to the certificate of the Master, with all the powers as to certifying and amending of a Judge of the High Court of Justice, and that the costs of the and of the reference be in the discretion of the Master, and that the costs of this application be

Dated the day of , 18 .

No. 35.

Order for Examination of Witnesses before Trial (O. 37, r. 5).

[*Heading as in Form* 1.]

Upon hearing *the solicitors on both sides*, and upon reading the affidavit of , filed *herein* [the day of , 18 , and]

It is ordered that a witness on behalf of the be examined *vivâ voce* (on oath or affirmation) before *one of the Examiners of the Court or before a* Master [*or* before esquire, special examiner], the solicitor or agent giving to the solicitor or agent notice in writing of the time and place where the examination is to take place.

And it is further ordered that the examination so taken be filed in the Central Office of the Supreme Court of Judicature, and that an office copy or copies thereof may be read and given in evidence on the trial of this cause, saving all just exceptions, without any further proof of the absence of the said witness than the affidavit of the solicitor or agent of the *party using the same*, as to his belief, and that the costs of this application be *costs in the action.*

Dated the day of , 18 .

[See Seton, pp. 88–89. The form in official use contains the words in italics which were not part of the original form.]

No. 36.

Short Order for Issue of Commission to Examine Witnesses (O. 37, r. 6).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the be at liberty to issue a commission for the examination of witnesses on behalf at .

And it is further ordered that the trial of this action be stayed until the return of the said commission, [the usual long order to be drawn up, and unless agreed upon by the parties within one week, to be settled by the Master (*or as the case may be*)], and that the costs of this application be

Dated the day of , 18 .

[*Note.*—In orders in C. D. the words within brackets are sometimes omitted in cases where there is no necessity for agreement between the parties and the writ of commission (Form, Appx. J., No. 13) is issued on the above form of order, without the long order being drawn up.]

No. 37.

Long Order for Commission to Examine Witnesses.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered as follows :—

1. A commission may issue directed to of and of commissioners named by and on behalf of the and to of and of commissioners named by and on behalf of the for the examination upon interrogatories and *viva voce* of witnesses on behalf of the said and respectively at aforesaid before the said commissioners, or any two of them, so that one commissioner only on each side be present and act at the examination.

2. Both the said and shall be at liberty to examine upon interrogatories and *viva voce* upon the subject-matter thereof or arising out of the answers thereto such witnesses as may be produced on their behalf, with liberty to the other party to cross-examine the said witnesses upon cross-interrogatories and *viva voce*, the party producing the witness for examination being at liberty to re-examine him *viva voce;* and all such additional *viva voce* questions, whether on examination, cross-examination, or re-examination, shall be reduced into writing, and, with the answers thereto, returned with the said commission.

3. Within days from the date of this order the solicitors or agents of the said and shall exchange the interrogatories they propose to administer to their respective witnesses, and shall also, within days from the exchange of such interrogatories, exchange copies of the cross-interrogatories intended to be administered to the said witnesses.

4. days previously to the sending out of the said commission, the solicitor of the said shall give to the solicitor of the said notice in writing of the mail or other conveyance by which the commission is to be sent out.

5. days previously to the examination of any witness on behalf of the said or respectively, notice in writing signed by any one of the commissioners of the party on whose behalf the witness is to be examined, and stating the time and place of the intended examination, and the names of the witnesses intended to be examined, shall be given to the commissioners of the other party by delivering the notice to them personally or by leaving it at their usual place of abode or busi-

App. K. Nos. 37, 37a.

ness, and if the commissioners of that party neglect to attend pursuant to the notice, then one of the commissioners of the party on whose behalf the notice is given shall be at liberty to proceed with and take the examination of the witness or witnesses *ex parte*, and adjourn any meeting or meetings, or continue the same, from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

6. In the event of any witness on his examination, cross-examination, or re-examination producing any book, document, letter, paper, or writing, and refusing, for good cause to be stated in his deposition, to part with the original thereof, then a copy thereof, or extract therefrom, certified by the commissioners or commissioner present to be a true and correct copy or extract, shall be annexed to the witness's deposition.

7. Each witness to be examined under the commission shall be examined on oath, affirmation, or otherwise in accordance with his religion by or before the said commissioners or commissioner.

8. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and *viva voce* questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters, to be nominated by the commissioners or commissioner, and to be previously sworn according to his or their several religions by or before the said commissioners or commissioner truly to interpret the questions to be put to the witness or witnesses, and his and their answers thereto.

9. The depositions to be taken under and by virtue of the said commission shall be subscribed by the witness or witnesses, and by the commissioners or commissioner who shall have taken such depositions.

10. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the Senior Master of the Supreme Court of Judicature on or before the day of , or such further or other day as may be ordered, enclosed in a cover under the seal or seals of the said commissioners or commissioner, and office copies thereof may be given in evidence on the trial of this action by and on behalf of the said and respectively, saving all just exceptions, without any other proof of the absence from this country of the witness or witnesses therein named, than an affidavit of the solicitor or agent of the said or respectively, as to his belief of the

11. The trial of this cause is to be stayed until the return of the said commission.

12. The costs of this order, and of the commission to be issued in pursuance hereof, and of the interrogatories, cross-interrogatories, and depositions to be taken thereunder, together with any such document, copy, or extract as aforesaid, and official copies thereof, and all other costs incidental thereto, shall be

Dated the day of , 18 .

No. 37A.

Order for Issue of Request for Commission (O. 37, r. 6A).

It is ordered that a letter of request do issue directed to the proper tribunal for the examination of the following witnesses, that is to say:

E. F., of

G. H., of

and I. J., of

And it is ordered that the depositions taken pursuant thereto when received be filed at the central office, and be given in evidence on the trial of this action, saving all just exceptions.

And it is further ordered that the trial of this action be stayed until the said depositions have been filed.

[*Note.*—The words in italics are not part of the original form, but are usually added. For form of undertaking to be given by solicitor on issuing letter of request, see P. M. R. 13A, Vol. I., Part II.]

No. 37B.

Request for Commission.

(See also O. 37, r. 6A, and (nn.).)

[*Heading:—To the President and Judges of, &c., &c., or as the case may be.*]

Whereas an action is now pending in the Division of the High Court of Justice in England, in which A. B. is plaintiff and C. D. is defendant. And in the said action the plaintiff claims

(*endorsement upon writ.*)

And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say:

E. F., of

G. H., of

and I. J., of

And it appearing that such witnesses are resident within the jurisdiction of your honourable Court.,

Now I as the President of the said Division of the High Court of Justice have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the High Court of Justice, you as the President and Judges of the said or some one or more of you, will be pleased to summon the said witnesses (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before some one or more of you, or such other person as according to the procedure of your Court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (or *viva voce*) touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers, and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same, together with such request in writing, if any, for the examination of other witnesses, through Her Majesty's Secretary of State for [Foreign Affairs], for transmission to the said High Court of Justice in England.

[*Note.*—If the Request is directed to a British Colony, the words "The Colonies" should be substituted for "Foreign Affairs." If the Request is directed to the High Court in India it should be transmitted direct and the concluding sentence of the form altered accordingly. As to undertaking by solicitor, see P. M. R. 13A, Vol. I., Part II.

"*And such other witnesses,*" *&c.*

In a case where the Divisional Court allowed Request to issue with these words remaining as part of the form, the German Court (Amtsgericht No. I, Berlin) refused to examine any witnesses except those named, and insisted on a supplemental Letter of Request naming the other witnesses whose evidence was required (*Reddaway* v. *Bentham*, Manchester D. R. 1891, R. 1087, not reported), and in the case of a Letter of Request to the Court at Wiesbaden, that Court declined to proceed with the examination until the names and addresses of the parties to the action had been supplied.]

App. K.
Nos. 37c, 38.

No. 37c.

Order for Appointment of Special Examiner to take Evidence Abroad (O. 37, r. 5).

[*Heading as in Form* 1.]

Upon hearing the solicitors on both sides, and upon reading the affidavit of

It is ordered that be appointed as special examiner for the purpose of taking the examination, cross-examination, and re-examination, vivâ voce, *on oath or affirmation, of witnesses on the part of the at aforesaid. The solicitors to give to the solicitors days' notice in writing of the date on which they propose to send out this order to for execution, and that days after the service of such notice the solicitors for the plaintiffs and defendants respectively do exchange the names of their agents at , to whom notice relating to the examination of the said witnesses may be sent. And that days (exclusive of Sunday) prior to the examination of any witness hereunder notice of such examination shall be given by the agent of the party on whose behalf such witness is to be examined to the agent of the other party (unless such notice be dispensed with). And that the deposition when so taken, together with any documents referred to therein, or certified copies of such documents, or of extracts therefrom, be transmitted by the examiner, under seal, to the senior master of the Supreme Court of Judicature, Royal Courts of Justice, London, on or before the day of next, or such further or other day as may be ordered, there to be filed in the proper office. And that either party be at liberty to read and give such depositions in evidence on the trial of this action, saving all just exceptions. And that the trial of this action be stayed until the filing of such depositions. And that the costs of and incident to this application and such examination be costs in the action.*

Dated the day of , 18 .

[Additional Form prescribed under O. 61, r. 33.]

No. 38.

Order for Examination of Judgment Debtor (O. 42, r. 32).

, 18 . [*Here put the letter and number.*]

In the High Court of Justice,
Division.

Between , Judgment Creditor,
and
, Judgment Debtor.

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the above-named judgment debtor attend and be orally examined as to whether any and what debts are owing to him, *and whether the debtor has any and what other property or means of satisfying the judgment, before* , at such time and place as he may appoint, and that the said judgment debtor produce [his books (or as may be ordered)] *any books or documents in his possession or power relating to the same* before the said at the time of the examination [and that the costs of this application be].

Dated the day of , 18 .

[In the official form now in use the words in brackets are omitted, and those in italics are added to the original form.]

No. 39.

Garnishee Order (Attaching Debt) (O. 45, r. 1.)

, 18 . [*Here put the letter and number.*]

In the High Court of Justice,
Division.
in Chambers.

Between Judgment Creditor,
and
Judgment Debtor.
Garnishee.

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court of Justice on the day of , 18 , for the sum of , on which judgment the said sum of £ remains due and unpaid.

And it is further ordered that the said garnishee attend the in Chambers, *Central Office, Royal Courts of Justice, Strand, London,* on day the day of , 18 , at o'clock in the noon, on an application by the said judgment creditor, that the said garnishee pay the debt due from him to the said judgment debtor, or so much thereof as may be sufficient to satisfy the judgment [and that the costs of this application be].

Dated the day of , 18 .

[See Seton, p. 430, Form 1. In the official form now in use the words in brackets are omitted, and those in italics are added to the original form.]

No. 40.

Garnishee Order (Absolute) (O. 45, r. 3).

[*Heading as in No. 39.*]

Upon hearing *the solicitors for the judgment creditor and the garnishee*, and upon reading the affidavit of , filed the day of , 18 , and *the order nisi made herein, dated the day of* , 18 , whereby it was ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor should be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court of Justice on the day of 18 , for the sum of £ , on which judgment the said sum of £ remained due and unpaid.

It is ordered that the said garnishee do forthwith pay the said judgment creditor £ , the debt due from him to the said judgment debtor (or so much thereof as may be sufficient to satisfy the judgment debt), and that in default thereof execution may issue for the same [and that the costs of this application be].

Dated the day of , 18 .

[See Seton, p. 430, Form 2. The concluding words in brackets are omitted from the official form in use and the words in italics have been added. When costs are given, however, the following clause is usually added, "and that the costs of this order be taxed and added to the judgment obtained by the said judgment creditor against the said judgment debtor."]

App. K. Nos. 40a—41.

No. 40A.

Order for Issue between Judgment Creditor and Garnishee (O. 45, r. 4).

[*Heading as in No.* 39.]

Upon hearing the solicitors for the judgment creditor and the garnishee, and reading the affidavit of , and the order nisi *herein, dated the day of , 18 .*

It is ordered that the judgment creditor and the garnishee proceed to the trial of an issue wherein the said judgment creditor shall be plaintiff and the said garnishee shall be defendant, and that the question to be tried shall be whether the said garnishee was indebted to the judgment debtor in any and what amount at the time the said order nisi *was served. And it is further ordered that the issue be prepared and delivered by the plaintiff therein within ten days from this date and be returned by the defendant therein within seven days and be tried at , and that the question of costs and all further questions be reserved until the trial of the said issue.*

Dated the day of , 18 .

[Additional form prescribed for official use under O. 61, r. 33. Chitty's Forms, 467.]

No. 40B.

Order to Deliver Bill of Costs.

18 ; . No.

In the High Court of Justice,
Queen's Bench Division.
Master *Master in Chambers.*

In the matter of , gentlem , of the solicitors of the Supreme Court.

Upon hearing the solicitors for and for , and upon reading the affidavit of , filed this day of , 18 .

It is ordered that the said do within seven days deliver to the said , or to his solicitor, a bill of costs in all causes and matters wherein he has been concerned for the said , and that he give credit therein for all moneys received by him from or on account of the said .

Dated this day of , 18 .

[Chitty, F. 34. This is an additional form prescribed for official use under O. 61, r. 33.]

No. 41.

Order on Client's Application to Tax Solicitor's Bill of Costs.

In the High Court of Justice,
Division.
in Chambers.

In the matter of the taxation of costs, and in the matter of gentleman, one of the solicitors of the Supreme Court.

Upon hearing, &c.

It is ordered that the bill of fees, charges, and disbursements delivered to the applicant by the above-named solicitor be referred to the taxing officer to be taxed, and that the said solicitor give credit for all sums of money by him received of or on account of the applicant, and that he refund what (if anything) he may on such taxation appear to have been overpaid.

And it is further ordered that [*if the said solicitor attends on the taxation*] the taxing officer tax the costs of the reference, and certify what shall be found due to or from either party in respect of the bill

and demand and of the costs of the reference, to be charged [if payable] according to the event of the taxation, pursuant to the statute.

And it is further ordered that the said solicitor do not commence or prosecute any cause or matter touching the demand pending the reference.

And it is further ordered that upon payment by the applicant of what (if anything) may appear to be due to the said solicitor the said solicitor do (if required) deliver up to the applicant, or as he may direct, all deeds, books, papers, and writings in the said solicitor's possession, custody, or power, belonging to the applicant.

Dated the day of , 18 .

[See Seton, pp. 230—231. The words in italics "if the said solicitor attends on the taxation" are inserted in this form by mistake, as under 6 & 7 Vict. c. 73, s. 37, on the client's application to tax, the costs of the reference are always directed to be taxed, and it is only where the solicitor applies for an order to tax, that it depends on whether the client attends on the taxation whether the costs of reference ought to be taxed. The words are omitted from the forms now in official use.

Enforcing.—As to enforcing this form of order, see O. 42, r. 17, (n.) "Any Costs."]

No. 42.

Order on Solicitor's Application to tax Bill of Costs.

In the High Court of Justice,
Division.
in Chambers.

In the matter of the taxation of costs, and in the matter of , gentleman, one of the solicitors of the Supreme Court.

Upon hearing and upon reading the affidavit of , filed the day of , 18 .

It is ordered that the above-named solicitor's bill of fees, charges, and disbursements, delivered to (hereinafter called the said client) be referred to the taxing officer to be taxed, and that the said solicitor give credit for all sums of money by him received from or on account of the said client, and that he refund what (if anything) he may on such taxation appear to have been overpaid.

And it is further ordered that if the said client shall attend upon such taxation the taxing officer tax the costs of the reference and certify what shall be found due to or from either party in respect of the bill and demand and of the costs of the reference to be paid according to the event of the taxation pursuant to the statute.

And it is further ordered that the said solicitor do not commence or prosecute any cause or matter touching the demand pending the reference.

And it is further ordered that upon payment by the said client of what (if anything) may appear to be due to the said solicitor the said solicitor do (if required) deliver to the said client, or as he may direct, all deeds, books, papers, and writings in the said solicitor's possession, custody, or power, belonging to the said client.

Dated the day of , 18 .

[See Seton, p. 232, Form 4 ; *Re Harcourt*, 32 Sol. Jo. 92.]

[The words "if the said client shall attend upon such taxation" were not included in the original form, but they are rightly added to forms now in use. See note to Form No. 41, *supra*.

This form does not contain any direction for payment by the client of what may be found due from him. In a chancery matter the solicitor must bring an action to recover such costs. (*Re Debenham & Walker*, (1895) 2 Ch. 430).]

No. 43.

Order to tax after Action brought.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 .

It is ordered that the plaintiff's bill of costs, charges, and disbursements delivered to the defendant, for the recovery of which this action is brought, be referred to the taxing officer to be taxed, and that the plaintiff give credit at the time of taxation for all sums of money by him received from or on account of the defendant.

And it is further ordered that the taxing officer tax the costs of the reference, and certify what upon such reference shall be found due to or from either party in respect of the bill and demand, and of the costs of the reference, pursuant to the statute.

And it is further ordered that the plaintiff do not prosecute this action touching the demand, pending the reference.

And it is further ordered that upon payment of what (if anything) may appear to be due to the plaintiff, together with the costs of this action (which are to be also taxed and paid), all further proceedings therein be stayed. and that the costs of this application be .

Dated the day of , 18 .

No. 44.

Order to try Action in County Court.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that this action be tried before the County Court of , holden at , and that the costs of this application be .

Dated the day of , 18 .

[See County Court Act, 1888, s. 65, Pt. V., *post*, and Seton, p. 708, Form 4.]

No. 45.

Order to give Security or try Action in County Court.

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that unless the plaintiff within give full security for the defendant's costs to the satisfaction of the Master [*or as the case may be*], this action be remitted for trial before the County Court of , holden at , and that the costs of this application be .

Dated the day of , 18 .

No. 46.

Order for Examination touching Means.

, 18 . [*Here put the letter and number.*]

In the High Court of Justice,
Division.
Master in Chambers

Between , *Judgment Creditor,*
and
, *Judgment Debtor.*

Upon hearing the solicitor for the judgment creditor and the judgment debtor.

It is ordered that the above-named judgment debtor attend before one of the Masters of the Supreme Court of Judicature at such time and place as such Master may appoint, and be orally examined as to whether any and what debts are owing to him and whether he has any and what other property or means of satisfying the judgment signed herein; and that the said judgment debtor produce any books or other documents in his possession or power relating to the same before the said Master at the time of the examination.

Dated, &c.

[See O. 42, r. 32; O. 45, r. 1. The above is an additional form prescribed for official use.]

[Forms No. 47 (Order for payment of judgment debt by instalments), No 48 (Order for committal of judgment debtor), and No. 49 (Order for committal of judgment debtor on non-payment of instalment), are no longer in use in the Q. B. Chambers, proceedings relating to them having been transferred to the Bankruptcy Court. See note "Debtors Act, 1869, s. 5," O. 42, r. 3 (*u*).]

No. 50.

Interpleader Order (No. 1) (O. 57).

. 18 . [*Here put the letter and number.*]

In the High Court of Justice,
Division.
in Chambers.

Between , Plaintiff, and Defendant,
and
Between , Claimant, and . Respondent.

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the claimant be barred, that no action be brought against the above-named [*sheriff*], and that the costs of this application be .

Dated the day of , 18 .

[For Forms of interpleader orders in the Chancery Division corresponding to this and the five following Forms, see Seton, pp. 436, 437, 444–446. And as to Interpleader generally, see O. 57, and notes.]

No. 50a.

Interpleader Order (No. 1a) (O. 57).

In the High Court of Justice, 18 , . *No.*
Queen's Bench Division.
Master *Master in Chambers.*

Between *Plaintiff,*
and
Defendant,
Claimant.

App. K. Nos. 50a—52.

Upon hearing the solicitors for the plaintiff, the claimant, and the sheriff of , and reading the affidavit of .

It is ordered that the sheriff withdraw from possession of the goods seized by him under the writ of fieri facias *herein and claimed by the claimant, that no action be brought, .*

And that the pay to the the costs of the interpleader to be taxed, and possession money to the sheriff.

Dated the day of , 18 .

[*Note.*—This is an additional form prescribed for official use under O. 61, r. 33.]

No. 51.

Interpleader Order (No. 2) (O. 57).

, 18 . [*Here put the letter and number.*]

In the High Court of Justice,
Division.
in Chambers.
Between , Plaintiff, and , Defendant,
and
, Claimant.

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the above-named claimant be substituted as defendant in this action in lieu of the present defendant, and that the costs of this application be

Dated the day of , 18 .

No. 52.

Interpleader Order (No. 3) (O. 57).

18 . [*Here put the letter and number.*]

In the High Court of Justice,
Division.
in Chambers.
Between , Plaintiff, and , Defendant,
and
Between , Claimant, and the said , execution creditor, and , the sheriff of , Respondents.

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the said sheriff proceed to sell the goods seized by him under the writ of fieri facias issued herein *and claimed by the claimant*, and pay the net proceeds of the sale, after deducting the expenses thereof, into Court in this cause, to abide further order herein.

And it is further ordered that the parties proceed to the trial of an issue in the High Court of Justice, in which the said claimant shall be the plaintiff and the said execution creditor shall be the defendant, and that the question to be tried shall be whether at the time of the seizure by the sheriff the *said* goods seized were the property of the claimant as against the execution creditor.

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within from this date, and be returned by the defendant therein within days, and be tried at

And it is further ordered that the question of costs and all further questions be reserved until the trial of the said issue, and that no action shall be brought against the said sheriff for the seizure of the said goods.

Dated the day of , 18 .

[*Note.*—The words in italics have been added under O. 61, r. 33.]

No. 53.

Interpleader Order (No. 4) (O. 57).

[*Heading as in Form* 52.]

Upon hearing, &c.

It is ordered that upon payment of the sum of £ into Court by the said claimant within from this date, or upon his giving within the same time security to the satisfaction of the Master [*or as the case may be*] for the payment of the same amount by the said claimant according to the directions of any order to be made herein, and upon payment to the above-named sheriff of the possession-money from this date, the said sheriff do withdraw from the possession of the goods seized by him under the writ of fieri facias herein *and claimed by the claimant*.

And it is further ordered that unless such payment be made or security given within the time aforesaid the said sheriff proceed to sell the said goods, and pay the proceeds of the sale, after deducting the expenses thereof and the possession-money from this date, into Court in the cause, to abide further order herein.

And it is further ordered that the parties proceed, &c.

And it is further ordered that this issue, &c.

And it is further ordered that the question of costs, &c.

Dated the day of , 18 .

[*Note.*—The words in italics have been added to the original form under O. 61, r. 33.]

No. 54.

Interpleader Order (No. 5) (O. 57).

[*Heading as in Form* 52.]

Upon hearing, &c.

It is ordered that upon payment of the sum of £ into Court by the said claimant, or upon his giving security to the satisfaction of the Master [*or as the case may be*] for the payment of the same amount by the claimant according to the directions of any order to be made herein, the above-named sheriff withdraw from the possession of the goods seized by him under the writ of fieri facias issued herein.

And it is further ordered that in the meantime, and until such payment made or security given, the sheriff continue in possession of the goods, and the claimant pay possession-money for the time he so continues, unless the claimant desire the goods to be sold by the sheriff, in which case the sheriff is to sell them and pay the proceeds of the sale, after deducting the expenses thereof and the possession-money from this date, into Court in the cause, to abide further order herein.

And it is further ordered that the parties proceed, &c.

And it is further ordered that this issue, &c.

And it is further ordered that the question of costs, &c.

Dated the day of , 18 .

No. 55.

Interpleader Order (No. 6) (O. 57).

[*Heading as in Form* 52.]

The claimant and the execution creditor having requested and consented that the merits of the claim made by the claimant be disposed of

App. K. Nos. 55—56a.

and determined in a summary manner, now upon hearing and upon reading the affidavit of , filed the day of 18 , and

It is ordered that

And that the costs of this application be

Dated the day of . 18 .

No. 56.

Interpleader Order (No. 7) (O 57).

[*Heading as in Form* 52.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and

It is ordered that the above-named sheriff proceed to sell enough of the goods seized under the writ of fieri facias issued in this action to satisfy the expenses of the said sale, the rent (if any) due, the claim of the claimant, and this execution.

And it is further ordered that out of the proceeds of the said sale (after deducting the expenses thereof, and rent, if any), the said sheriff pay to the claimant the amount of his said claim, and to the execution creditor the amount of his execution, and the residue, if any, to the defendant.

And it is further ordered that no action be brought against the said sheriff, and that the costs of this application be .

Dated the day of , 18 .

No. 56a.

Interpleader Order (No. 8) (Jud. Act, 1884, s. 17).

[*Heading as in Form* 50*a*.]

Upon hearing the solicitors for the plaintiff, the claimant, and the sheriff of , and upon reading the affidavit of .

It is ordered that upon payment of the sum of £ and possession money from the date of this order to the said sheriff by the said claimant within seven days from this date the said sheriff do withdraw from the possession of the goods seized by him under the writ of fieri facias *herein and claimed by the claimant.*

And it is further ordered that unless such payment be made within the time aforesaid the said sheriff proceed to sell the said goods and retain the proceeds of the sale, after deducting the expenses thereof and the possession money from this date.

And it is further ordered that the said sum of £ , or the proceeds of the said sale (as the case may be) do abide the order of the Judge of the County Court to whom the interpleader proceedings herein are hereinafter ordered to be transferred.

And it is further ordered that the interpleader proceedings herein be transferred to the County Court of , holden at .

And it is further ordered that the costs of this application be costs in the interpleader proceedings, and that no action be brought against the said sheriff for the seizure of the said goods.

Dated the day of , 18 .

[Additional form prescribed for official use under O. 61, r. 33.

Note.—The words in the fourth paragraph of this order mean that the sheriff is to retain the money until a specific order is made directing him to pay it over. Neither consent of parties, nor judgment in favour of one of them, can absolve the Judge from the necessity of making a specific order as to the money in the sheriff's hands (*Discount Banking Co., &c.*, v. *Lambarde*, (1893) 2 Q. B. 329).]

No. 57.

Order Dismissing Summons (generally).

[*Heading as in Form* 1.]

Upon hearing and upon reading the affidavit of , filed the day of , 18 , and
It is ordered that the application of be dismissed with costs to be taxed and paid by the to the [*or*, and that the costs of and occasioned by this application be the 's in any event].
Dated the day of , 18 .

[See Seton, p. 272, No. 5.]

No. 58.

Summons for Entry of Satisfaction on a Registered Bill of Sale
(O. 61, r. 27).

In the High Court of Justice.
In the matter of a bill of sale by to dated the day of , 18 , and registered on the day of , 18 ,
Let all parties concerned attend the Registrar of Bills of Sale at the Central Office, Royal Courts of Justice, London, on the day of , 18 , at o'clock in the noon, on the hearing of an application on the part of that satisfaction be entered on the above-mentioned bill of sale.
Dated the day of , 18 .
This summons was taken out by of .
To .

ADDITIONAL FORMS.

[Appendix K., of R. S. C., 1883, ends with No. 58, *supra*. The following additional Forms, prescribed for official use under O. 61, r. 33, have for convenience been numbered in continuation of the numbers in the Appendix.]

No. 58A.

Order for Entry of Satisfaction on a Registered Bill of Sale
(O. 61, r. 27).

In the High Court of Justice,
Division.
In the matter of a bill of sale by to , dated the day of , 18 .
Upon hearing , and upon reading .
It is ordered that satisfaction be entered on the above-mentioned bill of sale.
Dated the day of , 18 .

App. K. Nos. 59, 60.

No. 59.

Order to Register or Re-register Bill of Sale, &c. (41 & 42 Vict. c. 31, s. 14).

In the High Court of Justice,
Queen's Bench Division.
The Hon. Mr. Justice , Judge in Chambers.
In the matter of a made between and , dated the day of , 18 , and registered the day of , 18 .

Upon the application of and reading the affidavit of , filed this day of , 18 .

It is ordered that the time for registering [*or* re-registering] the said be extended until next inclusive, but this order to be without prejudice to the rights of parties acquired prior to the time when such shall be actually registered [*or* re-registered].

Dated this day of , 18 .

No. 60.

Order to Consolidate (Underwriters) (O. 49, r. 8).

[*Heading as in Form* 1.]

Upon hearing the solicitors or agents on both sides :—

It is ordered that all further proceedings in these actions, except the first mentioned action, be stayed until ultimate judgment be given in the first mentioned action hereinafter called the test action, the defendants in all the other actions submitting to be bound and concluded by the ultimate judgment in the test action upon the following conditions :—

That if the defendant in the test action pay money into Court, or if he pay money under a judge's order to stay proceedings, the said other defendants shall, within ten days after such payment as aforesaid, respectively pay into Court under this order, the like sum, or such proportion as the same will bear to the sum assured by them respectively, and in that event the plaintiff shall be at liberty to take such money out of Court, and if he elect to receive such money in satisfaction of his claim in the action wherein the money is paid, then he may proceed to tax his costs, at any time, either before or after the ultimate judgment in the said test action, but if the defendants, or either of them, neglect to pay such sum, then the plaintiff shall be at liberty to file a statement of claim and sign judgment against such defendant or defendants by default, and tax his costs, and issue execution for the amount so neglected to be paid as aforesaid, and the costs so to be taxed as aforesaid, and to levy the same, together with the costs and expenses of such execution.

That in the event of the plaintiff's claim being settled by the defendants in the test action, the defendants in the other actions shall abide by such order as to costs and otherwise, as a judge may make.

That if the plaintiff on the trial of the test action ultimately recover more than the sum so paid into Court by the defendant in that action, and if the defendants in the several other actions neglect to pay the plaintiff in proportion as aforesaid, the difference between the money paid into Court by them respectively, or levied under an execution as aforesaid, and the sum so recovered as aforesaid, the plaintiff shall be at liberty to sign judgment for such proportionate difference, and levy the same, together with the costs of judgment, execution, and all other expenses, notwithstanding any former judgment or execution, that may

App. K, No. 60.

have been signed or executed against the said defendant or defendants as aforesaid.

That if the defendants in the test action do not pay any money into Court, and if the ultimate judgment be given for the plaintiff, then the defendants in the said other actions shall pay to the plaintiff the amount assured by them respectively, or such proportion thereof as the judgment recovered bears to the sum assured by the said defendants in the test action, together with the costs to be taxed within ten days after such taxation.

That if the amount be not so paid by the defendants, or either of them, as last aforesaid, then the plaintiff shall be at liberty to file a statement of claim and sign judgment by default, for the amount in the action in which the money is neglected to be paid, and to issue execution for the same, and levy the costs of judgment and execution on the usual terms.

That in the event of the test action being referred to arbitration or of a case being stated therein for the opinion of the Court, the defendants in the other actions submit to be bound by the final award or certificate of the arbitrator or arbitrators or umpire or ultimate judgment of the Court on such special case, and if the finding or judgment be in favour of the plaintiff then that they will pay to the plaintiff within ten days after the plaintiff shall be entitled to enforce the said award or certificate or the ultimate judgment to be obtained on such special case the amount assured by them respectively, or such proportion thereof as the amount found due to the plaintiff by the certificate, award, or ultimate judgment bears to the sum assured by them respectively, together with costs to be taxed, and in case of non-payment the plaintiff shall be at liberty to file a statement of claim and sign judgment by default for the amount in the action in which the money is neglected to be paid, and to issue execution for the same and levy the costs of judgment and execution on the usual terms.

That if in the test action the plaintiff shall recover judgment against the defendant therein, and the defendant therein shall at any time take proceedings by way of appeal against any decision or ruling of the High Court of Justice or Her Majesty's Court of Appeal, the defendants in the other actions shall give security to the satisfaction of one of the masters of the Supreme Court of Judicature for the payment of the respective amounts claimed from them, corresponding with the security (if any) to be given by the defendant in the test action, and that in default of such security being given by the said other defendants the plaintiff shall be at liberty to sign judgment and issue execution against the defendants respectively making default.

And that in case the defendant in the test action shall become bankrupt or file a petition for liquidation or composition with creditors, or take the benefit of any Act of Parliament for the time being in force relating to bankrupts, or persons unable to pay their debts, the plaintiff shall be at liberty to substitute the name of any one of the other defendants as the defendant in the test action, and on the plaintiff succeeding in such action, such substituted defendant shall be liable for all the costs to which the original or any previously substituted defendant in the test action would have been liable in the said action.

And also that in the event of the defendant in the test action being ordered to make discovery of documents, the defendants in the other actions will agree to any order for discovery being made against them on its being shown to the satisfaction of a master of the Supreme Court of Judicature that there are, or have been, in existence in the possession, custody, or power of such other defendants, documents omitted from the affidavit of discovery made by the defendant in the test action relating or material to the matters in question in the test action.

Dated the day of , 18 .

[Chitty, F., 229.]

App. K. Nos. 61—63.

No. 61.

Order to bring up Witness in Criminal Custody (16 & 17 Vict. c. 30, s. 9).

[*Heading as in Form* 1.]

Upon reading the affidavit of .

It is ordered that the keeper of her Majesty's prison at shall have before , on the day of , 18 , at o'clock in the forenoon, the body of , a prisoner in his custody (as it is said), then and there to testify the truth and give evidence in this , on behalf of , and so on from day to day until his attendance as such witness shall be no longer required, and thereupon he be taken back without delay to the said prison and there detained until he be discharged by due course of law.

Dated the day of , 18 .

[Chitty, F., 334.]

No. 62.

Receiver Order (Interim) (Jud. Act. 1873, s. 25, sub-s. 8; O. 50, r. 6).

[*Heading as in Form* 1.]

Upon the application of for the plaintiff and the plaintiff by his undertaking to be answerable for all sums to be received by the receiver hereinafter named.

It is ordered that be appointed without security until the day of next inclusive or further order to receive the rents and profits of , but without prejudice to the rights of any prior incumbrancer or his possession (if any) and the tenants of the said estate are (without prejudice as aforesaid) to attorn and pay their rents in arrear and growing rents to the said so long as he shall continue to be such receiver, and that all questions as to passing his accounts and payments thereunder and all further questions be reserved until further order.

Defendant to be at liberty to apply in meantime.

Dated the day of , 18 .

No. 63.

Receiver Order (Jud. Act, 1873, s. 25, sub-s. 8; O. 50, r. 6).

[*Heading as in Form* 1.]

Upon hearing for the plaintiff, and upon reading the affidavit of .

It is ordered that be appointed receiver upon first giving security by bond to the satisfaction of one of the Masters of the Supreme Court of Judicature [*or* "the District Registrar," *as the case may be*] to receive the rents, profits, and monies, receivable in respect of the following property (that is to say):

But this appointment is to be without prejudice to the rights of any prior incumbrancers upon the said premises, who may think proper to take possession of or receive the same by virtue of their respective securities, or, if any prior incumbrancer is in possession, then without prejudice to such possession.

App. K. Nos. 63, 64.

And that the tenants of the said premises do attorn and pay their rents in arrear and growing rents to such receiver. And that such receiver have liberty, if he shall think proper (but not otherwise), out of the rents, profits, and monies to be received by him, to keep down the interest upon the prior incumbrances, according to their priorities, and be allowed such payments (if any) in passing his accounts, and that such receiver shall on the * day of next, and at such further and other times as may be ordered by the master [*or*, "district registrar"], leave and pass such accounts, and shall on the † day of next, and at such further and other times as may be hereafter ordered by the master [*or*, "district registrar"] pay the balance or balances appearing due on the accounts so left or such part thereof as shall be certified as proper to be so paid; such sums to be paid in or towards satisfaction of what shall for the time being be due in respect of the judgment signed on the day of for the sum of £ debt, and £ for costs, making together the sum of £ ; and that the costs of this order and of carrying the same into effect and of obtaining the discharge of the receiver (such costs to be ascertained by the master [*or*, "district registrar"]) shall be primarily payable out of the sums received by the receiver, but if there shall be no sums received or the amount shall be insufficient, then upon the certificate of the master [*or*, "district registrar"] being given stating the amount of the deficiency (such certificate to be given after passing the final account), the amount of the deficiency so certified shall be paid by the judgment debtor to the judgment creditor.

* 3 months.

† 1 month after the 3 months.

It is further ordered that the balance (if any) remaining in the hands of the receiver, after making the several payments aforesaid, shall forthwith be paid by the receiver into Court to the credit of this action subject to further order.

And any of the parties are to be at liberty to apply to the Judge in Chambers as there may be occasion.

Dated this day of , 18 .

No. 64.

Order for Deposit of Securities or Effects (O. 50).

[*Heading as in Form* 1.]

Upon hearing

It is ordered that the [plaintiff *or* defendant] on or before the day of , 18 , place in a box in the presence of the solicitors of the [defendant *or* plaintiff].

The [*here describe the articles sufficiently for identification*] such box to be endorsed "In the High Court of Justice, Queen's Bench Division [*title of cause with distinguishing mark*, 18 ,] and to be sealed in the presence of the solicitors of the plaintiff and defendant. And the on or before the day of , 18 , is to deposit such sealed box in Court, and the same is not to be opened or removed without the further order of the Court [or a judge]; and that the costs of this application be .

Dated the day of , 18 .

[See P. M. R. (22), Vol. I., Part II. This form would now appear to be obsolete. See O. 61, r. 30.]

App. K. Nos. 65—67.

No. 65.

Order allowing Inspection of Securities or Effects (O. 50).

[*Heading as in Form* 1.]

Ledger credit to which lodged
Upon hearing
It is ordered that the sealed box endorsed—

"IN THE HIGH COURT OF JUSTICE,
"QUEEN'S BENCH DIVISION,
" v.
" 18 ."

deposited in Court and lodged to the above ledger credit at the Bank of England (Law Courts Branch) on account of the Paymaster-General for and on behalf of the Supreme Court of Judicature pursuant to an order of the Court [or a judge] dated the day of , 18 , be delivered out to the senior clerk for the time being of the General Filing Department of the Central Office of the High Court of Justice, and that be allowed to open the said box in the said General Filing Department under the superintendence of an officer of that department, and to inspect the contents of such box under the same superintendence. And that after such inspection the same be re-sealed by the parties in the presence of the said officer and be redeposited by such senior clerk at the Bank of England to the credit and account aforesaid, subject to the further order of the Court [or a judge], and that the costs of this application be
Dated the day of , 18 .

[See P. M. R. (22), Vol. I., Part II. See (n.) to preceding form.]

No. 66.

Order for Interim Injunction (Jud. Act, 1873, s. 25, sub-s. 8; O. 50, r. 6)

[*Heading as in Form* 1.]

Upon hearing for the plaintiff and upon reading the affidavit of , filed the day of , 18 , and the plaintiff by his said undertaking to abide by any order the Court or a judge may make as to damages in case the Court or a judge should hereafter be of opinion that the defendant shall have sustained any by reason of this order which the plaintiff ought to pay. It is ordered and directed that the defendant his agents and servants and every of them be restrained and an injunction is hereby granted restraining them and every of them from until after the trial of this action or until further order.
Dated the day of , 18 .

[Chitty, F., 247; Seton, 452.]

No. 67.

Order to Try by Jury (O. 36, rr. 2, 7).

[*Heading as in Form* 1.]

Upon hearing the solicitors on both sides
It is ordered that this action be tried with a jury.
And that the costs of this application be
Dated the day of , 18 .

No. 68.

Order for View by Jury (C. L. P. Act, 1852, s. 114; Reg. Gen. Hil. Term, 1853, rr. 48, 49; O. 50, rr. 3, 5).

[*Heading as in Form* 1.]

Upon hearing the solicitors on both sides and upon reading the affidavit of , filed herein.

It is ordered that a view of the place in question be had as prescribed by the statutes and rules of Court in that case made and provided, and that the sheriff of the county of do have six or more of the jurors summoned for the trial of this action, to view the place in question, and before the trial thereof, on the day of 18 , that the said jurors do meet at the house of known by the name of and that on the part of the plaintiff and on the part of the defendant do attend the same day and show the place in question to the said six or more of the said jurors, and that no evidence be given on either side. The hereby consenting that in case no view be had, or if a view shall be had by any of the said jurors that the trial of this action shall proceed, and that no objection shall be made on account thereof.

Dated the day of , 18 .

[C. O., Sched. N., Form 5; Chitty, F., 349.]

No. 69.

Order for Sale by Private Contract (46 & 47 Vict. c. 52, s. 145).

[*Heading as in Form* 1.]

Upon hearing the solicitors for .

It is ordered that the sheriff of be at liberty to sell the goods and chattels seized by him under the writ of *fieri facias* in this action by private contract.

Dated the day of , 18 .

No. 70.

Order for Security for Costs.

[*Heading as in Form* 1.]

Upon hearing the solicitors on both sides, and reading the affidavit of .

It is ordered that the plaintiff give security for the defendant's costs in this action to the satisfaction of the master, and that in the meantime all further proceedings be stayed.

And that the costs of such application be .

Dated the day of , 18 .

App. K. Nos. 71, 72.

No. 71.

Order for Recovery of Vacant Premises (O. 9, r. 9).

[*Heading as in Form* 1.]

Upon reading the affidavit of .

It is ordered that service of the writ of summons in this action under Order IX., Rule 9, be good and sufficient service of the said writ for the recovery of possession of the land or property claimed in this action.

Dated the day of , 18 .

No. 72.

Order for Payment of Money out of Court (S. C. F. R., 1884, r. 28).

HIGH COURT OF JUSTICE.—QUEEN'S BENCH DIVISION.

Title of cause or matter } *v.* (18 . No.).
Date , 18 .

The Paymaster-General is hereby directed to make the payments specified below out of the money standing in his books to the credit of the above cause or matter.

Name of person to whom, and also of the person (if any) upon whose authority, payment is to be made.		Particulars. (When lodged, &c.)	Amount to be paid.
Person to be paid. (Christian name to precede surname.)	Person (if any) to give authority for payment.		

Total amount in words

(*Signature*)

Master of the Supreme Court.

Official Seal.

APPENDIX L.

CHANCERY DIVISION.

No. 1.

Summons by Master (O. 55, r. 24).

In the High Court of Justice,
Chancery Division.
Mr. Justice

In the matter of the estate of A.B., late of , in the county of , deceased.

Or,

Between C.D., Petitioner,
and
E.F., Defendant.

The defendant E.F. [*or* G.H., of, &c.] is hereby summoned to attend at the Chambers of Mr. Justice , at the Royal Courts of Justice, on the day of , at o'clock in the noon, to be examined [*or* to be examined as a witness] on the part of the , for the purpose of the proceedings directed by Mr. Justice to be taken before me.

Dated this day of , 18 .

X.Y., Master.

This summons was taken out by of , in the county of , solicitors for

No. 2.

Form of Advertisement for Claimants not being Creditors (O. 55, r. 47).

Pursuant to a judgment [*or* order] of the Chancery Division of the High Court of Justice made in [the matter of the estate of and in] an action by against , the persons claiming to be next of kin to [*or* the heir of, *as the case may be*] , late of in the county of , who died in or about the month of , are by their solicitors, on or before the day of , to come in and prove their claims at the Chambers of Mr. Justice , at the Royal Courts of Justice, or in default thereof they will be peremptorily excluded from the benefit of the said judgment [*or* order]. The

App. L. Nos. 2—5.

day of , at o'clock in the noon, at the said Chambers is appointed for hearing and adjudicating upon the claims.

Dated the day of , 18 .

A.B., Master.

No. 3.

Form of Advertisement for Creditors (O. 55, r. 47).

Pursuant to a judgment [*or* an order] of the Chancery Division of the High Court of Justice made in [the matter of the estate of A.B., and in] an action S. against P., the creditors of A.B., late of , in the county of , who died in or about the month of , 18 , are on or before the day of , 18 , to send by post, prepaid, to E.F., of , the solicitor of the Defendant C.D., the executor [*or* administrator] of the deceased [*or as may be directed*], their Christian and surnames, addresses and descriptions, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them, or in default thereof, they will be peremptorily excluded from the benefit of the said judgment [*or* order]. Every creditor holding any security is to produce the same before Mr. Justice , at his Chambers, the Royal Courts of Justice, London, on the day of , 18 , at o'clock in the noon, being the time appointed for adjudication on the claims.

Dated this day of , 18 .

[*G.H., Master.*]

[*Note.*—The signature of the Master is no longer necessary. See O. 55, r. 46A.]

No. 4.

Notice to Creditor to produce Documents (O. 55, r. 50).

[*Short Title.*]

You are hereby required to produce in support of the claim sent in by you against the estate of A.B., deceased [*describe the document required to be produced*], before Mr. Justice . at his Chambers at the Royal Courts of Justice, London, on the day of , 18 , at o'clock in the noon.

Dated this day of . 18 .

G.R., of, &c., solicitor for plaintiff [*or* defendant, *or as the case may be*].

To Mr. S. T.

No. 5.

Affidavit of Executor or Administrator as to Claims of Creditors (O. 55, r. 52).

In the High Court of Justice,
Chancery Division.
Mr. Justice .

[*Title.*]

We, C.D., of, &c., the above-named plaintiff [*or* defendant, *or as may be*], the executor [*or* administrator] of A.B., late of , in the county

of , deceased, and E.F., of, &c., solicitor, severally make oath and say as follows :—

I, the said E.F., for myself, say as follows :—

1. I have in the paper writing now produced, and shown to me, and marked A., set forth a list of all the claims the particulars of which have been sent in to me by persons claiming to be creditors of the said A.B., deceased, pursuant to the advertisement issued in that behalf, dated the day of , 18 .

And I, the said C.D., for myself, say as follows :—

2. I have examined the particulars of the several claims mentioned in the paper writing now produced, and shown to me, and marked A., and I have compared the same with the books, accounts, and documents of the said A.B. [*or as may be, and state any other inquiries or investigations made*], in order to ascertain, so far as I am able, to which of such claims the estate of the said A.B. is justly liable.

3. From such examination [*and state any other reasons*] I am of opinion and verily believe, that the estate of the said A.B. is justly liable to the amounts set forth in the sixth column of the first part of the said paper writing, marked A., and to the best of my knowledge and belief, such several amounts are justly due from the estate of the said A.B., and proper to be allowed to the respective claimants named in the said schedule.

4. I am of opinion that the estate of the said A.B. is not justly liable to the claims set forth in the second part of the said paper writing, marked A., and that the same ought not to be allowed without proof by the respective claimants [*or*, I am not able to state whether the estate of the said A.B. is justly liable to the claims set forth in the second part of the said paper writing, marked A., or whether such claims, or any parts thereof, are proper to be allowed without further evidence].

5. Except as hereinbefore mentioned, there are not, to the best of my knowledge, information, and belief, any other claims against the estate of the said A.B.

Sworn, &c.

No. 6.

Exhibit referred to in Affidavit (No. 5).

A.

[*Short Title.*]

List of claims, the particulars of which have been sent in to E.F., the solicitor of the plaintiff [*or* defendant, *or as may be*], by persons claiming to be creditors of A.B., deceased, pursuant to the advertisement issued in that behalf, dated the day of , 18 .

This paper writing marked A. was produced and shown to , and is the same as is referred to in his affidavit sworn before me this day of , 18 .

W. B., &c.

App. L. Nos. 6—8.

FIRST PART.—CLAIMS PROPER TO BE ALLOWED WITHOUT FURTHER EVIDENCE.

Serial No.	Names of Claimants.	Addresses and Descriptions.	Particulars of Claim.	Amount claimed.	Amount proper to be allowed.
				£ s. d.	£ s. d.

SECOND PART.—CLAIMS WHICH OUGHT TO BE PROVED BY THE CLAIMANTS.

Serial No.	Names of Claimants.	Addresses and Descriptions.	Particulars of Claim.	Amount claimed.
				£ s. d.

No. 7.

Notice to Creditor of Allowance of Claim (O. 55, r. 56).

[*Short Title.*]

The claim sent in by you against the estate of A.B., deceased, has been allowed at the sum of £ , with interest thereon at £ per cent. per annum, from the day of , 18 , and £ for costs.

[*If part only allowed, add,* If you claim to have a larger sum allowed, you are hereby required to prove such further claim, and you are to file such affidavit as you may be advised in support of your claim, and give notice thereof to me on or before the day of , 18 , next, and to attend by your solicitor at the Chambers of Mr. Justice at the Royal Courts of Justice on day of , 18 at o'clock in the noon, being the time appointed for adjudicating on the claim.]

Dated this day of , 18 .

G.R., of, &c., solicitor for the plaintiff [*or*, defendant, *or as may be.*]

To Mr. P. R.

No. 8.

Notice to Creditor to prove his Claim (O. 55, r. 56).

[*Short Title.*]

You are hereby required to prove the claim sent in by you against the estate of A.B., deceased. You are to file such affidavit as you may be advised in support of your claim, and give notice thereof to me on or before the day of next, and to attend by your solicitor

at the chambers of Mr. Justice at the Royal Courts of Justice on the day of , 18 , at o'clock in the noon, being the time appointed for adjudicating on the claim.

Dated this day of , 18 .

G.R., of, &c., solicitor for the plaintiff [*or*, defendant, *or as may be*].

To Mr. S. T.

No. 9.

Notice how to obtain Payments (O. 55, rr. 60, 60A).

In the High Court of Justice,
Chancery Division,
Pay Office, No. 28A.

Precise title of matter or suit in Pay Office Books.

To of The sum of £ , payable to you as one of the creditors of deceased, under an Order in this (matter and) action, dated , 189 , may be obtained at the office of the Paymaster of the Supreme Court, Royal Courts of Justice, London, upon production of this notice, which may be presented (a) at that office, or may be sent to the Paymaster by post with the subjoined request filled up and signed by you for a remittance of the amount.

Signed
Address
Solicitor for

REQUEST.

request the Paymaster to send by post a direction for payment of £ due to as herein notified, to be crossed payable to account at Bank.

Signature of applicant (*b*)
Full postal address (*c*)
Date

Note.—(*a*) If personal application is made the payee must be identified by a solicitor who has signed the Pay Office Books.

(*b*) If payable to a firm, the request must be signed by a partner, who should describe himself as such, thus—"A.B., a partner, in the firm of B.C. & Co." If payable to a corporate body, the request must be sealed and signed by the secretary or other proper officer.

(*c*) Cheques will only be transmitted to the postal addresses of the payees and not to the care of other persons.

Note. Ed.—The above is not statutory, but is in official use in place of the prescribed form below. It may be purchased in the Form Room.

[*Short Title.*]

The amounts payable to the creditors of A.B., deceased, under an order in this (matter and) action dated , 18 , may be obtained at the office of the Paymaster of the Supreme Court, Royal Courts of Justice, London, upon production of this notice, which may be presented* at that office, or may be sent to the Paymaster by post, with a request indorsed thereon as under, for a remittance of the amount, viz.:—

I request the Paymaster to send me by post a direction for payment of £ due to me, as herein notified, to be payable to my account at Bank.

* If by payee in person he must be identified.

[*Note.*—The above was substituted for the previous form by R. S. C. August, 1892. See O. 55, r. 60A. It is now replaced by the preceding form printed in italics above.]

App. L. No. 10.

No. 10.

Certificate of Master (O. 55, r. 67).

[*Title.*]

In pursuance of the directions given to me by Mr. Justice , I hereby certify that the result of the accounts and inquiries which have been taken and made in pursuance of the judgment [*or*, order] in this cause dated the day of , is as follows:

1. The defendants , the executors of the testator, have received personal estate to the amount of £ , and they have paid, or are entitled to be allowed on account thereof, sums to the amount of £ , leaving a balance due from [*or*, to] them of £ on that account.

The particulars of the above receipts and payments appear in the account marked , verified by the affidavit of , filed on the day of , and which account is to be filed with this certificate, except that in addition to the sums appearing on such account to have been received, the said defendants are charged with the following sums, [*state the same here or in a schedule*] and except that I have disallowed the items of disbursement in the said account numbered , and

[*Or in cases where a transcript has been made.*]

The defendants have brought in an account verified by the affidavit of , filed on the day of , and which account is marked , and is to be filed with this certificate. The account has been altered, and the account marked , and which is also to be filed with this certificate, is a transcript of the account as altered and passed.

2. The debts of the testator which have been allowed, are set forth in the schedule hereto, and with the interest thereon and costs mentioned in the schedule are due to the persons therein named, and amount altogether to £ .

3. The funeral expenses of the testator amount to the sum of £ which I have allowed the said executors in the said account of personal estate.

4. The legacies given by the testator are set forth in the schedule hereto, and with the interest therein mentioned remain due to the persons therein named, and amount altogether to £ .

5. The outstanding personal estate of the testator consists of the particulars set forth in the schedule hereto.

6. The real estate to which the testator was entitled consists of the particulars set forth in the schedule hereto.

7. The defendants have received rents and profits of the testator's real estate, &c., [*in a form similar to that provided with respect to the personal estate*].

8. The incumbrances affecting the said testator's real estate are specified in the schedule hereto.

9. The real estates of the testator directed to be sold, have been sold, and the purchase-monies amounting altogether to £ have been paid into Court.

N.B.—The above numbers are to correspond with the numbers in the order after each statement; the evidence produced is to be stated as follows:—

The evidence produced on this account [*or*, inquiry] consists of the probate of the testator's will, the affidavit of A.B., filed , and paragraph numbered of the affidavit of C.D., filed .

No. 11. App. L. No. 11.

Affidavit verifying Accounts and answering usual Inquiries as to Real and Personal Estate (O. 55, r. 75).

In the High Court of Justice,
Chancery Division.

Mr. Justice .

[*Title.*]

We, A.B., of, &c., C.D., of, &c., and E.F., of, &c., the above-named defendants, severally make oath and say as follows :

1. We have according to the best of our knowledge, information, and belief, set forth in Schedule I. hereto a full account and inventory of the personal estate of or to which G.H. , the testator in the judgment [*or*, order] dated made in this action [*or*, matter] named, who died on the day of , was possessed or entitled at the time of his death, *and not by him specifically bequeathed.*

2. Save what is set forth in the said Schedule I., *and what is by the said testator specifically bequeathed*, the said testator was not to the best of our knowledge, information, or belief, at the time of his death possessed of or entitled to any debt or sum of money due to him from us or any of us on any account whatsoever, nor to any leasehold or other personal estate whatsoever.

3. The said testator's funeral expenses have been paid. The same consist of the items of disbursement numbered and in the account hereinafter referred to [*or if not paid, it should be so stated with the amount due and to whom due*].

4. We have in the account marked A., now produced and shown to us, according to the best of our knowledge, information, and belief, set forth a full account of the personal estate of the said testator, *not by him specifically bequeathed*, which has come to our hands or to the hands of any of us, or to the hands of any person or persons by our order, or the order of any of us, or for our use or the use of any of us, with the times when, the names of the persons from whom, and on what account the same has been received, and also a like account of the disbursements, allowances, and payments made by us or any of us on account of the said testator's funeral expenses, debts, and personal estate, together with the times when, the names of the persons to whom, and the purposes for which the same were disbursed, allowed, or paid.

5. And we, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say that except as appears in the said account marked A., we have not, nor has any of us, nor have nor has any other person or persons by our order or the order of any of us, or for our use or the use of any of us, possessed, received, or got in any part of the said testator's personal estate, nor any money in respect thereof, and that the said account marked A. does not contain any item of disbursement, allowance, or payment, other than such as has actually been disbursed, paid, or allowed on the account aforesaid.

6. To the best of our knowledge, information, and belief, the personal estate of the said testator, now outstanding or undisposed of, consists of the particulars set forth in Schedule II. hereto.

7. Save what is set forth in the Schedule II., there is not to our knowledge, information, or belief, any part of the said testator's personal estate now outstanding or undisposed of.

8. We have, according to the best of our knowledge, information, and belief, set forth in Schedule III. hereto the particulars of all the real estate which the said G.H. was seised of or entitled to at the date of his death.

Italics to be inserted only where the direction is to take an account of personal estate not specifically bequeathed.

This should accord with the order directing the account.

App. L. No. 11.

9. Save what is set forth in the said schedule, the said testator was not to the best of our knowledge, information, or belief, at the time of his death seised of or entitled to any real estate whatsoever.

10. We have, according to the best of our knowledge, information, and belief, set forth in Schedule IV. hereto the particulars of all the incumbrances affecting the said testator's real estate, and what part thereof such incumbrances respectively affect.

This should accord with the order directing the account.

11. We have in the account marked B., now produced and shown to us, according to the best of our knowledge, information, and belief, set forth a full account of all the rents and profits of the said testator's real estate which has come to our hands or to the hands of any of us, or to the hands of any person or persons by our order, or the order of any of us, or for our use, or the use of any of us, and the times when, the names of the persons from whom, on what account, in respect of what part of such estate the same have been received, and the times when the same became due, and also a like account of the disbursements, allowances, and payments made by us, or any or either of us, in respect of the said testator's real estate, or the rents and profits thereof, and the times when, the names of the persons to whom, and the purposes for which, the same were made.

12. And we, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say that, except as appears in the said account marked B., we have not, nor has any of us, nor has any other person by our order, or the order of any of us, or for our use, or the use of any of us, possessed, received, or got in any rents or profits of the said testator's real estate, nor any money in respect thereof, and that the said account marked B. does not contain any item of disbursement, payment, or allowance, other than such as has actually been disbursed, paid, or allowed, as above stated.

The FIRST SCHEDULE above referred to.

1. £50 cash in the house.

2. £100 cash at the testator's bankers, Messrs. A. and B.

3. £1,000 Consolidated £3 per cent. annuities, standing in the testator's name.

4. £10 due from John James, for half-year's rent of house at , to Michaelmas, 1882.

5. £32 6*s.* 8*d.* balance remaining due from John Thomas on account of half-year's rent of farm at , to Michaelmas, 1882.

6. £300, a debt due from Samuel Jones on a bond, with interest from , at per cent.

7. A leasehold house situate at , held under a lease for a term of , which will expire on , at a rent of £ a year, underlet to James Evans for a term which will expire on at a rent of £50 a year.

8. £25, half a year's rent due from the said James Evans to

The SECOND SCHEDULE above referred to.

[The particulars to be set forth in the same manner as above.]

The THIRD SCHEDULE above referred to.

[To contain a short particular of the real estate.]

The FOURTH SCHEDULE above referred to.

[To contain a short particular of the incumbrances, and showing what part of the above real estate is subject to each.]

App. L. No. 12.

No. 12

Account of Personal Estate, being Account A. referred to in Form No. 11 (O. 55, r. 75).

A.

In the High Court of Justice,
Chancery Division.
Mr. Justice .

[*Title.*]

This account marked A. was produced and shown to A.B., C.D., and E.F., and is the account referred to in their affidavit sworn this day of

Before me [*to be signed here by Commissioner or officer before whom the affidavit is sworn*].

RECEIPTS.

No. of Item.	Date when received.	Names of Persons from whom received.	On what account received.	Amount received.
	18 .			£ s. d.
1			Found in house.	
2		Evans and Co. . .	Balance at Bankers'.	
3			Half-year's dividend on £2,000 £3 per cent. annuities due.	
4		John James . .	Bond debt of £300 and interest from to	
5		Samuel Jones . .	Bond debt of £300 and interest from to	
6		James Evans . .	Half-year's rent of leasehold house due	
7		William Williams .	Produce of sale of the above leasehold house.	

DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
	18 .			£ s. d.
1		James Price . .	Undertaker's bill for funeral.	
2		Messrs. A. & B. .	Expenses of Probate.	
3		John George . .	A debt due to him for medical attendance.	
4		James Price . .	Bond debt of £1,000 and £25 for interest thereon from to .	

App. I. No. 13.

No. 13.

Account of Rents and Profits, being Account B. referred to in No. 11 (O. 55, r. 75).

B.

In the High Court of Justice,
Chancery Division.
Mr. Justice

[*Title.*]

This account marked B. was produced and shown to A.B., C.D., and .F., and is the account referred to in their affidavit sworn this day of .

Before me [*to be signed here by Commissioner or officer before whom affidavit sworn*].

RECEIPTS.

No. of Item.	Date when received.	Names of Persons from whom received.	On what Account and in respect of what Part of the Estate received, and when due.	Amount received.
	18 .			£ s. d.
1		John James . .	Half-year's rent for farm in parish of , due .	
2		Thomas James . .	One quarter year's rent of house at , due .	
3		John James . .	Same as No. 1, due	

DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
	18 .			£ s. d.
1		Sun Insurance Office	One year's insurance against fire, due .	
2		Thomas Carpenter .	Repairs at John James' farm.	
3		James Francis . .	Income Tax, half-year due 10th October.	

No. 14.

Receiver's Account (O. 50, r. 19).

[*Title.*]

(To Accord with the Order.)

The [] account of A.B., the receiver appointed in this cause [*or*, pursuant to an order made in this cause, dated the day of], *to receive the rents and profits of the real estate, and to collect and get in the outstanding personal estate* of C.D., the testator [*or*, intestate] in this cause named, from the day of , to the day of .

REAL ESTATE—RECEIPTS.

No. of Item.	Date when received.	Tenant's Name.	Description of Premises.	Annual Rent. £ s. d.	Arrears due at . £ s. d.	Amount due at . £ s. d.	Amount received. £ s. d.	Arrears remaining due. £ s. d.	Observations.
1		John Jones .	Home Farm in the Parish of Norton, in the County of Oxford.						
2		Thomas Jones.	House at Norton, aforesaid.						

PAYMENTS AND ALLOWANCES ON ACCOUNT OF REAL ESTATE.

No. of Item.	Date of Payment or Allowance.	Names of Persons to whom paid or allowed.	For what Purpose paid or allowed.	Amount. £ s. d.
1		Sun Fire Office . .	One year's insurance of, due .	
2		Thomas Carpenter . .	Bill for repairs at house let to Thomas Jones . . .	
3		James Francis . .	Allowance for a half-year's Income Tax, due . .	
			Total payments £	

RECEIPTS ON ACCOUNT OF PERSONAL ESTATE.

No. of Item.	Date when received.	Names of Persons from whom received.	On what Account received.	Amount received. £	s.	d.

PAYMENTS AND ALLOWANCES ON ACCOUNT OF PERSONAL ESTATE.

No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed. £	s.	d.

SUMMARY.

	£	s.	d.	£	s.	d.
Amount of balance due from receiver on account of real estate on last account . . .				,,		,,
Amount of receipts on the above account of real estate				,,		,,
Balance of last account paid into Court	£	s.	d.			
	,,		,,			
Amount of payments and allowances on the above account of real estate .	,,		,,			
Amount of receiver's costs of passing this account as to real estate . .	,,		,,			
Balance due from the receiver on account of real estate . . £						
Amount of balance due from receiver on last account of personal estate				,,		,,
Amount of receipts on the above account of personal estate				,,		,,
Balance of last account paid into Court	£	s.	d.			
	,,		,,			
Amount of payments and allowances on the above account of personal estate	,,		,,			
Amount of receiver's costs of passing this account as to personal estate .	,,		,,			
Balance due from the receiver on account of personal estate . £						

App. L. No. 15.

No. 15.

Ordinary Conditions of Sale (O. 51, r. 2)

Conditions of Sale.

1. No person is to advance less than £ at each bidding.

2. The sale is subject to a reserved bidding for each lot, which has been fixed by the Judge to whom this cause is assigned.

3. Each purchaser is at the time of sale to subscribe his name and address to his bidding, and the abstract of title, and all written notices and communications and summonses are to be deemed duly delivered to and served upon the purchaser by being left for him at such address, unless or until he is represented by a solicitor.

4. Each purchaser is at the time of sale to pay a deposit of £ per cent. on the amount of his purchase-money to , the person appointed by the said Judge to receive the same.

5. One of the Masters attached to the Chambers of the said Judge will after the sale proceed to certify the result, and the day of , at of the clock noon, is appointed as the time at which the purchasers may, if they think fit, attend by their solicitors at the Chambers of the said Judge at the Royal Courts of Justice, London, to settle such certificate. The certificate will then be settled, and will in due course be signed and filed, and become binding without further notice or expense to the purchasers.

6. The vendor is within [] days after such certificate has become binding to deliver to each purchaser, or his solicitor, an abstract of the title to the lot or lots purchased by him, subject to the stipulations contained in these conditions. And each purchaser is, within four days after the actual delivery of the abstract, to deliver at the office of , solicitor at , in the county of , a statement in writing of his objections and requisitions (if any) to or on the title as deduced by such abstract, and upon the expiration of such last-mentioned time —and in this respect time is to be deemed of the essence of the contract —the title is to be considered as approved of and accepted by such purchaser, subject only to such objections and requisitions, if any.

7. Each purchaser is, in addition to the amount of his bidding at the sale, to pay the value of all timber and timber-like trees, tellers, and pollards, if any, on the lot purchased by him, down to 1*s.* per stick, inclusive, the amount thereof to be ascertained by a valuation to be made in manner following; that is to say, each party (vendor and purchaser), or their respective solicitors, is within days after the Chief Clerk's certificate has become binding to appoint by writing one valuer, and give notice in writing to the other party of such appointment, and the valuers so appointed are to make such valuation, but before they commence their duty they are to appoint an umpire by writing, and the decision of such valuers if they agree, or of such umpire if they disagree, is to be final; and in case the purchaser shall neglect or refuse to appoint a valuer, and give notice thereof in the manner and within the time above specified, the valuation is to be made by the valuer appointed by the vendor alone, and his valuation is to be final.

8. Each purchaser is, under an order for that purpose to be obtained by him, or in case of his neglect by the vendors at the costs of the purchaser, upon application at the Chambers of the said Judge, to pay the amount of his purchase-money (*after deducting the amount paid as a deposit*), *together with the amount of the valuation under the seventh condition, if any*, into Court to the credit of this cause , on or before the said day of , and if the same is not so paid, then the purchaser is to pay interest on his purchase-money, including the amount of such valuation at the rate of £ per cent. per annum from the day of to the day on which the same is actually paid. Upon payment of the purchase-money in manner aforesaid, the

To be altered if the 4th or 7th condition not inserted.

This to be

App. L. Nos. 15, 16.

in accordance with the order directing the sale.

purchaser is to be entitled to possession, or to the rents and profits, as from the day of , down to which time all outgoings are to be paid by the vendors.

9. If any error or mis-statement shall appear to have been made in the above particulars, such error or mis-statement is not to annul the sale or entitle the purchaser to be discharged from his purchase, but a compensation is to be made to or by the purchaser, as the case may be, and the amount of such compensation is to be settled by the said Judge at Chambers.

[*Add to these such conditions respecting the title and title-deeds as the conveyancing counsel shall advise to be necessary or proper.*]

Lastly. If the purchaser shall not pay his purchase-money at the time above specified, or at any other time which may be named in any order for that purpose, and in all other respects perform these conditions, an order may be made by the said Judge upon application at Chambers for the re-sale of the lot purchased by such purchaser, and for payment by the purchaser of the deficiency, if any, in the price which may be obtained upon such re-sale and of all costs and expenses occasioned by such default.

No. 16.

Certificate of Result of Sale (O. 51, r. 6A).

In the High Court of Justice,
Chancery Division.

I, A.B., of, , auctioneer, the person appointed to sell the estate comprised in the particulars hereinafter referred to, hereby certify as follows :—

1. I did at the time and place, in the lots and subject to the conditions specified in the said particulars and conditions of sale hereto annexed and marked A., put up for sale by auction the estates described in the said particulars.

The result of the sale is truly set forth in the bidding paper hereto annexed and marked B.

2. I have received the sums set forth in the fourth column of the schedule hereto as deposits from the respective purchasers whose names are set forth in the second column of the said schedule opposite the said sums in respect of their purchase-money leaving the sums set forth in the fifth column of the said schedule due in respect thereof.

The SCHEDULE above referred to.

No. of Lot.	Name of Purchaser.	Amount of Purchase-money.	Amount of Deposit received.	Amount remaining due.

(Signed) *A. B.*,
Auctioneer.

(Date.)

To the best of my belief the above certificate is correct.

(Signed) *C. D.*
The solicitor for
the party having the conduct of the
above-mentioned sale.

[This form was substituted for the form of affidavit of result of sale by R. S. C. Dec. 1885, r. 18.]

App. L. No. 17.

No. 17.

List of Debts allowed (O. 55, r. 75).

James *v.* Jones.

LIST OF DEBTS.

No. of Entry of Claim.	Names of Creditors.	Addresses.	Amounts allowed for Principal, Interest, and Costs. £ s. d.	Total Amounts Due £ s. d.
2	James Allen	Boston, in the county of Lincoln, Surgeon	100 0 0	
		Interest	4 0 0	
		Costs	2 2 0	
				106 2 0
1	Charles Cohen	98, Piccadilly, in the county of Middlesex, Gentleman, executor of John Thomas	67 0 0	
		Interest from 5th October, 1850, at £5 per cent.	4 2 0	
		Costs	2 2 0	
				73 4 0
5	John Dennis and Owen Thomas.	16, Fleet Street, London. Grocers and co-partners	100 0 0	
		Interest from 16th October, 1852, at £5 per cent.	5 0 0	
		Another debt	62 0 0	
		Interest	2 10 0	
		Costs	2 4 0	
				171 14 0

App. I. Nos. 18, 19.

No. 18.

List of Legacies remaining unpaid (O. 55, r. 75).

James *v.* Jones.

LIST OF LEGACIES.

Names of Legatees.	Descriptions.	Amounts of Principal and Interest.	Total Amounts Due.
		£ s. d.	£ s. d.
James Oliver	Son of testator, an infant	100 0 0	
	Interest	7 5 6	107 5 6
Mary Russell	Of 20, Cheapside, London, widow	50 0 0	
	Interest from 1st January, 1850, the death of testator.	4 8 0	54 8 0
Jane, the wife of John Williams.	Of Lincoln, Esq.	250 0 0	
	Paid in part	50 0 0	
		200 0 0	
	Interest	14 11 0	214 11 0
		Total £	

No. 19.

List of Annuities and Arrears due (O. 55, r. 75).

LIST OF ANNUITIES.

Names of Annuitants.	Description of Annuitants and Nature of Annuities.	Amounts of Annuities.	Amounts of Arrears due.
		£ s. d.	£ s. d.
Mary Jones	Spinster, daughter of testator, during her life	50 0 0	25 0 0
Maria Williams.	Widow of testator, during her life and widowhood	200 0 0	
	Arrears due from 7th Aug., 1882, down to which it has been paid	—	300 0 0
	Totals £		£

No. 20.

List of Apportionments among Creditors or Legatees (O. 55, r. 75).

APPORTIONMENT AMONG CREDITORS (OR LEGATEES).

Names of Creditors (or Legatees).	Addresses.	Amounts before certified to be due and subsequent Interest.	Totals due.	Amounts apportioned.
		£ s. d.	£ s. d.	£ s. d.
John Jones	20, Cheapside, London, woollen draper	200 0 0		
	Subsequent interest.	17 10 0	217 10 0	57 4 8
Thomas Young and Robert Young.	Braintree, in the county of Essex, executors of William Young, deceased	200 0 0		
	Subsequent interest.	17 10 0	217 10 0	57 4 8
			Total £	

No. 20A.

Receiver's Recognizance (O. 50, r. 16).

Re No. 18 *v.* Mr. Justice this action is attached, has approved of and allowed this recognizance.

, the Judge to whose Court *Master.*

A.B. , of , C.D. , of , and E.F. of .

Before our Sovereign Lady the Queen in her High Court of Justice personally appearing, do acknowledge themselves, and each of them doth acknowledge himself, to owe to and , two of the Masters of the Supreme Court, the sum of , to be paid to the said and , or one of them, or the executors or administrators of them, or one of them, and unless they do pay the same, they, the said , do grant, and each of them doth grant for himself, his heirs, executors, and administrators, that the said sum of shall be levied, recovered, and received, of and from them and each of them, and of and from all and singular the manors, messuages, lands, tenements, and hereditaments, goods and chattels, of them and each of them wheresoever the same shall or may be found. Witness our said Sovereign Lady Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and so forth, at the Royal Courts of Justice, the day of , 18 .

Whereas, by an order of the High Court of Justice, Chancery Division made by Mr. Justice in an action In the matter of, &c. [*here give title of action and distinctive mark*] A. B. *v.* C. D. 189 No. and dated the day of . It was ordered that [*recite so much of order as may be necessary*].

App. L. Nos. 20a, 21.

And whereas the Judge hath [approved of the said as a proper person to be such receiver *or such receiver and manager as the case may be*] and hath approved of the above bounden and as sureties for the said , and hath also approved of the above-written recognizance with the underwritten condition as a proper security to be entered into by the said A. B., C. D., and E. F. pursuant to the said order and the rules of the Supreme Court in that behalf, and as well in respect of the period for which the said has been appointed such receiver (*or receiver and manager*) as aforesaid, as also in respect of any extended or further period during which he may be continued or appointed such receiver (*or receiver and manager*), either under the said order or under any further order in the said action, and in testimony of such approbation the Chief Clerk of the said Judge hath signed an allowance in the margin hereof.

Now the condition of the above-written recognizance is such that if the said do and shall duly account for all and every the sum and sums of money which he shall so receive on account of the [*follow words of order*] rents and profits of the real estate, and in respect of the personal estate of the said , and in respect of the said business, including as well all and every the sum and sums so received in respect of the period for which the said has been appointed such receiver (*or receiver and manager*) as aforesaid as also all and every the sum and sums so received in respect of any appointment for any extended or further period during which he may be appointed such receiver (*or receiver and manager*) either under the said order, or under any further order in the said action at such periods as the said Judge shall appoint, and do and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court or Judge hath directed or shall hereafter direct, then the above recognizance shall be void and of none effect, otherwise the same is to be and remain in full force and virtue.

Taken and acknowledged by the above-named at in the County of this day of , 189 .

Before me, a Commissioner for Oaths.

[*Note.*—This form is not part of the Appendices to the Rules. It has been recently settled by authority and adopted by the Chancery Masters.]

No. 21.

Receiver's Bond (O. 50, r. 16).

Know all men by these presents that I, and we, Society, Limited, whose office is situated at No. (hereinafter called the Society), are jointly and severally held and firmly bound unto and , two of the Masters of the Supreme Court in the sum of £ of lawful money of the United Kingdom of Great Britain and Ireland to be paid unto the said and , or one of them, or the executors or administrators of them, or one of them, for which payment well and truly to be made I the said , for myself, my heirs, executors, and administrators, and every of them, and we, the Society, for ourselves and our successors, do bind and oblige ourselves for the whole firmly by these presents, sealed with the seal of the said , and also with the seal of the said Society, and signed by two of the directors thereof.

Dated the day of , in the year of our Lord one thousand eight hundred and ninety .

day of , 18 .

v.

, the Judge to whom this action is attached, has approved and allowed this bond this day of 18 .

Master.

Mr. Justice

App. L. No. 21.

Whereas by an order of the High Court of Justice, Chancery Division, made in an action In the matter of the estate of , wherein are plaintiffs and are defendants, 189 , No. , and dated the day of 189 , it was ordered that a proper person should be appointed to receive (*or* that upon the above bounden first giving security he should be appointed receiver of) the rents and profits of the real estate, and to collect and get in the outstanding personal estate of in the said order named [*or* of the business of , lately carried on between the plaintiff and defendant, &c. &c., and also to manage the said business, but by the said order the said is not to act as manager beyond the day of 18 without the leave of the Judge]. And whereas Mr. Justice , the Judge to whom the said action is attached, hath approved of the said as a proper person to be such receiver [*or* receiver and manager], and hath approved of the Society as surety for the said in the said sum of £ , and has also approved of the above bond with the under-written conditions [together with a recognizance entered into by the said in the penal sum of £ , and bearing date the day of 18] as a proper security to be entered into by the said and the said Society pursuant to the said order, and the general orders of the Supreme Court in that behalf, as well in respect of the period for which the said has been appointed such receiver [*or* receiver and manager] as aforesaid, as also in respect of any extended or further period during which such receiver [*or* receiver and manager] may be continued either under the said order or under any further order in the said action, and in testimony of such approval the chief clerk of the said Judge hath signed an allowance in the margin hereof [and of the said recognizance respectively]. Now the condition of the above written bond or obligation is such that if the above bounden , his executors or administrators, or some or one of them, do and shall duly account for all and every the sum and sums of money which the said shall so receive on account of the rents and profits of the real estate, and in respect of the personal estate of the said and in respect of the said business, including as well all and every the sum and sums so received in respect of the period for which the said has been appointed such receiver [*or* receiver and manager] as aforesaid, as also all and every the sum and sums so received in respect of any extended or further period during which the said may be continued or appointed as receiver [*or* receiver and manager] either under the said order or under any further order in the said action, at such period and in such manner as the High Court of Justice, Chancery Division, or the Judge thereof to whose court the said action shall for the time being be attached shall appoint, and do and shall pay the same as such Court or Judge hath directed or shall hereafter direct, then the above written bond or obligation shall be void, otherwise the same shall, subject to the provisions hereinafter contained, be and remain in full force and virtue. Provided always, that if the said shall for every successive term of 12 calendar months, to be computed from the day of 18 , within 15 days after the day of , in each and every year pay or cause to be paid at the office of the Society the annual premium or sum of £ , then the Society shall at any time after such default in payment, be at liberty to apply by summons to the Judge at Chambers, to whose Court the said action shall for the time being be attached, to be relieved from all further liability as such sureties as aforesaid, and such summons having been served upon such persons as the Judge shall direct, and being finally heard, all further liability of the said Society as such sureties as aforesaid shall, from and after the final hearing of such summons, or from and after such other time as the Judge shall direct, cease and determine, save and except in respect of any loss or damage occasioned by any act or default of the said in relation to his duties as such receiver [*or* such receiver

App. L. Nos. 21, 22.

and manager] as aforesaid, previously to such cesser and determination of liability. Provided always, that a certificate or certificates under the hand of the chief clerk for the time being of the Judge to whose Court the said action shall for the time being be attached of the amount which the said as such receiver [*or* receiver and manager] as aforesaid is liable to pay and has not paid shall be sufficient and conclusive evidence against the said , his heirs, executors, and administrators, and against the Society, and also as between the Society and the said and of the truth of the contents of the said certificate or certificates, and that this bond has become forfeited thereby to the amount of the sum stated in such certificate or certificates, and shall form a valid and binding charge not only against the said , his heirs, executors, and administrators, but also against the Society and the funds and property thereof without its being necessary for the said and , or either of them, their or either of their executors or administrators first to take legal or other proceedings against the said , his heirs, executors, or administrators for the recovery thereof, and without any further or other proof being given either by or on the part of the said and or either of them, their or either of their executors or administrators in any action, suit, or proceeding to enforce this bond against the Society or against the said , his heirs, executors, or administrators, or by or on the part of the said Society in any action or proceeding against the said , his heirs, executors, or administrators, of the amount of such damage or loss, or that the same has been sustained, incurred, or occasioned by and through the act or default of the said while in office. Provided always, and it is further agreed between the said and the Society that the said shall and will, on being discharged from his office, of or ceasing to act as such receiver [*or* receiver and manager] as aforesaid, forthwith to give notice thereof in writing, and also furnish to the Society free of charge an office copy of the order of the Court or Judge discharging him from his office as such receiver [*or* receiver and manager] as aforesaid. And further that he, the said , his heirs, executors and administrators, shall and will from time to time, and at all times, save, defend, and keep harmless the said Society and their successors, and the property and funds of the said Society from and against all loss and damage, costs and expenses which the said Society, or the funds or property thereof shall or may or otherwise might at any time sustain or be put unto, for or by reason, or in consequence of the said Society having entered into the above written bond for and at the request of the said .

In witness whereof the said has hereunto set his hand and seal, and the said Society have hereunto caused their common seal to be affixed, and the said two directors thereof have set their hands the day and year first above written.

[*Note.*—This form is not part of the Appendices to the Rules.]

No. 22.

Affidavit verifying Receiver's Account (O. 50, r. 20).

In the High Court of Justice,
Chancery Division.
Mr. Justice .

(*Title.*)

I, , of , the receiver appointed in this cause, make oath and say as follows:

1. The account marked with the letter A. produced and shown to me at the time of swearing this my affidavit, and purporting to be my

account of *the rents and profits of the real estate and of the outstanding personal estate of* , the testator [*or* intestate] in this cause, from the day of , 18 , to the day of , 18 , both inclusive, contains a true account of all and every sum of money received by me or by any other person or persons by my order or, to my knowledge or belief, for my use on account, or in respect of the *said rents and profits accrued due on or before the said day of on an account or in respect of the said personal estate*, except what is included as received in my former account [*or* accounts] sworn by me.

2. The several sums of money mentioned in the said account, hereby verified to have been paid and allowed, have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. The said account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

4. W. X. and Y. Z. , the sureties named in the recognizance dated the of , 18 , are both alive, and neither of them has become bankrupt or insolvent.

[This form was substituted for the form given in the Appendix L. to the R. S. C. 1883, by R. S. C. Oct. 1884.]

No. 23.

Affidavit verifying Abstract (O. 55, r. 75).

In the High Court of Justice,
Chancery Division.
Mr. Justice

[*Title.*]

I, A.B., of, &c., solicitor for , in this cause [*or*, matter] make oath and say as follows:

I have carefully examined and compared the abstract written on sheets of paper, now produced and shown to me at the time of swearing this affidavit, and marked with the letter A, with the several deeds and documents thereby purported to be abstracted. Such abstract is a true and correct abstract of the said deeds and documents, so far as such deeds and documents relate to the hereditaments referred to in an order made in this action [*or*, matter] dated the day of

No. 24.

Affidavit verifying Engrossments of Deeds (O. 55, r. 75).

In the High Court of Justice,
Chancery Division.
Mr. Justice

[*Title.*]

I, A.B., of, &c. , make oath and say as follows:

1. I have carefully examined and compared the parchment writing now produced and shown to me at the time of swearing this affidavit, and marked with the letter A, with the draft or paper writing now produced and shown to me at the time of swearing this affidavit, and marked with the letter B, being the draft of the conveyance [*or*, settlement, &c.] settled at the Chambers of the Judge to whom this cause [*or*, matter] is assigned pursuant to the order made in this cause [*or*, matter] dated

2. The said parchment writing is a true and correct transcript and engrossment of the said draft.

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[No. 25. *Originating Summons.*—Annulled by R. S. C. Nov. 1893, and replaced by Forms App. K., Nos. 1A, 1B, 1G, 1H.]

No. 26.

Request to set down Cause for further consideration (O. 36, r. 21).

In the High Court of Justice,
Chancery Division.
Mr. Justice .

A. *v.* B.

I request that this cause, the further consideration whereof was adjourned by order of the day of , may be set down for further consideration before Mr. Justice

C.D., Plaintiff's [*or* Defendant's] Solicitor.

No. 27.

Notice that Cause has been set down for further consideration (O. 36, r. 24).

In the High Court of Justice,
Chancery Division.
Mr. Justice .

A. *v.* B.

Take notice that this cause, the further consideration whereof was adjourned by the order of the day of , was on the day of set down for further consideration before Mr. Justice for the day of .

Dated, &c.

C.D., Solicitor for

To Mr. , Solicitor for .

No. 28.

Form of ordering Accounts and Inquiries (O. 33, r. 7).

This Court doth order that the following accounts and inquiry be taken and made; that is to say,

1. An account of the personal estate not specifically bequeathed of A.B., deceased, the testator in the pleadings named, come to the hands of, &c.
2. An account of the testator's debts.
3. An account of the testator's funeral expenses.
4. An account of the testator's legacies and annuities (if any), given by the testator's will.
5. An inquiry what parts (if any) of the testator's said personal estate are outstanding or undisposed of.

And it is ordered that the testator's personal estate not specifically bequeathed be applied in payment of his debts and funeral expenses in a due course of administration, and then in payment of the legacies and annuities (if any) given by his will.

(If ordered.)

And it is ordered that the following further inquiries and accounts be made and taken; that is to say,

6. An inquiry what real estate the testator was seised of or entitled to at the time of his death.

7. An account of the rents and profits of the testator's real estate received by, &c.

8. An inquiry what incumbrances (if any) affect the testator's real estate, or any and what parts thereof.

(If Sale ordered.)

9. An account of what is due to such of the incumbrancers as shall consent to the sale hereinafter directed in respect of their incumbrances.

10. An inquiry, what are the priorities of such last-mentioned incumbrances?

And it is ordered that the testator's real estate be sold with the approbation of the judge, &c., &c.

And it is ordered that the further consideration of this cause be adjourned, and any of the parties are to be at liberty to apply as they may be advised.

No. 29.

Consent to Act.

I, A. B., , of , hereby consent to act as a trustee of the [*describe the instrument*].

(Signed) A. B.

I, C. D., , of , solicitor, hereby certify that the above-written signature is the signature of A. B., the person mentioned in the above-written consent.

(Signed) C. D., *solicitor for the said A. B.*

[This form was added by R. S. C., Dec., 1885, see O. 38, r. 19A. The words in italics after the signature are no part of the original form, but they are necessary in order to meet the requirements of O. 38, r. 19A which prescribes this form.]

App. M.

APPENDIX M.

[Referred to in O. 22, r. 13.]

PAYMENT INTO AND OUT OF COURT.

[The regulations in this Appendix, which related to payment into and out of court in the Queen's Bench Division only (see O. 22, r. 13), have been superseded by the Rules made under the Judicature Funds Act, 1883 (see S. C. J. (Funds) Act, 1883, ss. 1, 3, and 4; S. C. Funds Rules, 1894, *post*, Part III.).]

APPENDIX N.

COSTS.

Note.—The numbers prefixed to each fee or allowance are not in the Appendix as issued, but have been added for convenience of reference.

Application of Appendix N.—The allowances in this Appendix apply to taxations as between party and party, and as between solicitor and client, whether the costs are taxed under an order in an action or matter, or whether under an order made under the Solicitors Act (see *Re Harrison*, 33 C. D. 52).

Old allowances.—This Appendix does not contain all the allowances which may be made to a solicitor, either as between party and party or as between solicitor and client, in respect of proceedings in the High Court of Justice or Court of Appeal.

By O. 65, r. 27 (37), "The rules, orders, and practice of any court whose jurisdiction is transferred to the High Court of Justice or Court of Appeal, relating to costs, and the allowance of the fees of solicitors and attorneys, and the taxation of costs, existing prior to the commencement of the principal Act, shall, in so far as they are not inconsistent with the principal Act and these rules, remain in force and be applicable to costs of the same or analogous proceedings, and to the allowance of the fees of solicitors of the Supreme Court and the taxation of costs in the High Court of Justice and Court of Appeal." See (nn.) to this rule, and cf. O. 72, r. 2, and (nn.).

The taxing officers are also directed by O. 65, r. 27 (30) as to work and labour properly performed and not hereinbefore provided for and in respect of which fees have heretofore been allowed, to allow the same or similar fees as have heretofore been allowed.

Among old schedules of fees which are kept alive by these rules, so far as such old fees are not inconsistent with the Jud. Acts and R. S. C. (and the present Appendix), are the 2nd Schedule of Fees (30 Jan. 1857) in the Ch. Cons. Orders, 1860, and the Directions to the Masters and Schedule of Fees of Hil. T. 1853, under the C. L. P. Act, 1852, both of which contain a number of allowances which are still in force. See also O. 65, r. 27 (37), (n.) "Effect of Rule."

New allowances.—In addition to the allowances in Appendix N. and the old allowances referred to above, new allowances have been from time to time adopted by the Taxing Masters under their general powers and the authority of O. 65, r. 27 (30), in order to provide for the costs of new procedure.

Higher and Lower Scale.—*Causes and matters commenced prior to 24th Oct.*, 1883.—As to these, R. S. C. 12 Aug. 1875, so far as they are applicable, remain in force by virtue of O. 65, r. 27 (30, 37), and O. 72, r. 2 (see O. 65, r. 9, and (nn.)).

Causes and matters commenced subsequent to 24 Oct., 1883.—Solicitors may charge the higher scale of costs where the order for taxation gives costs on the higher scale or where the taxing officer being directed in the order to consider the question thinks proper to allow such costs

App. N. General Notes.

(O. 65, r. 9). The taxing officer also has power for the reasons contained in r. 9, to allow costs on the higher scale on a reference to tax a bill of costs (*ibid.* r. 10). Except in the above-mentioned cases the solicitor can charge the lower scale of costs only.

Increase of Allowances in Appendix N.: Discretion of Taxing Officer.—The taxing officer has discretion in the case of writs of summons requiring special indorsement, special cases, pleadings, affidavits in answer to interrogatories and other special affidavits, and admissions under O. 32, r. 4, to make such allowance as he thinks proper, for work, labour, and expenses, in and about the preparation of such documents, in lieu of the allowances for instructions, preparing, and drawing and attendances (O. 65, r. 27 (1)); and also he has authority to make such further allowance as he shall think reasonable in the case of instructions to sue or defend, and the preparation of briefs, if on special grounds he thinks the fees provided inadequate (O. 65, r. 27 (3)). As to petitions, see Fee 72, *post*, "Increase of this fee," &c.

By O. 65, r. 27 (38) the taxing officer in exercising his discretion as to any allowance is to take into consideration the other fees and allowances to the solicitor and counsel, if any, in respect of the work to which such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings, and all other circumstances. For cases as to discretion of taxing officer, see O. 65, rr. 27 (38, 41), and (nn.) thereto.

Party and Party and Solicitor and Client Costs.—By O. 65, r. 27 (29), where costs are to be paid or borne by another party, no costs are to be allowed which do not appear to the taxing officer "to have been necessary or proper for the attainment of justice or defending the rights of the party, or which appear to the taxing master to have been incurred through over-caution, negligence, or mistake, or merely at the desire of the party." See further, same rule (nn.) "Principles of Party and Party Taxation" and "Solicitor and Client Costs," and see Morgan & Wurtzburg, 4, 5, 482 *et seq.*

Folios and Figures, how to be counted.—A folio is to comprise 72 words, and every figure comprised in a column or authorised to be used is to be counted as one word (O. 65, r. 27 (14)), that is 111 (one hundred and eleven) is to be counted as three and not as four words.

Incomplete Affidavits and Pleadings.—The costs of all work properly and not prematurely done down to the time of any notice which stops the work are allowable, see O. 65, r. 27 (30), (n.) "Incomplete Affidavits," &c.

Same Solicitor for both Parties.—The fees for delivery of pleadings, services, and notices, are not to be allowed where the same solicitor is for both parties unless it be necessary for the making of an affidavit of service (O. 65, r. 27 (6)); nor a separate fee for perusals (r. 27 (7)).

Same Solicitor for Two or more Defendants.—As to separate pleadings and other proceedings where the same solicitor is for two or more defendants, see O. 65, r. 27 (8) and (nn.) thereto.

Two Actions: Different Plaintiffs: One Solicitor.—As to two actions by different plaintiffs represented by one solicitor against the same defendant, see O. 65, r. 27 (8) (n.) "Scope of Rule."

Apportionment.—As to the apportionment of costs where several defendants who retain one solicitor are chargeable with proportionate part of costs only, see *Re Colquhoun*, 5 De G. M. & G. 35, and other cases cited O. 65, r. 27 (8), (nn.); as to apportionment of costs generally, see O. 65, r. 1, (n.) "Apportionment of costs," and r. 2, (n.) "Different causes of action."

Writs, Summonses and Warrants

WRITS, SUMMONSES, AND WARRANTS.

Fees 1 *to* 17.—As to what is covered by these fees, see Fee 18.

"Warrants."—Warrants in the office of the taxing masters of the Chancery division were abolished by O. 65 r. 19A.

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
1. Writ of summons for the commencement of any action	0	6	8	0	13	4

Increase of this allowance: discretion of taxing officer.—See (n.) "Increase of Allowances," &c. at the head of this Appendix.

Amendment of Writ of Summons.—If the amendment of the writ of summons is by adding parties, the fee for "instructions to add parties" (Fee 76, *post*) is chargeable. If the writ is specially indorsed under O. 3, r. 6, the writ of summons or the indorsement on it is a pleading (see O. 2, r. 1 (n.) "Writ a pleading"), and Fee 73, *post*, "Instructions to amend any pleading," and the other fees chargeable in the case of the amendment of a pleading apply, see Fee 73, *post*, (n.) "Charges for Amendment." A fee of 6*s.* 8*d.* is usually allowed for attending to amend at the central office. See Scott's Guide to Costs, p. 237.

Fee to counsel to settle.—It is usual in the C. D. to allow a fee to settle the indorsement of a writ of summons, except where it is of a simple nature.

2. And for indorsement of claim, if special	0	5	0	0	5	0

"If Special."—In the Q. B. D. this fee is allowed only where the writ is specially indorsed under O. 3, r. 6. In the C. D. the fee is allowed in every case, every indorsement being treated as being "special" within the terms of this fee.

3. Concurrent writ of summons	0	6	8	0	6	8
4. Renewal of a writ of summons	0	6	8	0	6	8
5. Notice of a writ for service in lieu of writ out of jurisdiction	0	4	0	0	5	0
6. Writ of inquiry	1	1	0	1	1	0
7. Writ of mandamus	0	10	0	1	1	0
8. Or per folio	0	1	4	0	1	4
9. Writ of *subpœna ad testificandum* or *duces tecum*	0	6	8	0	6	8
10. And if more than four folios, for each folio beyond four	0	1	4	0	1	4
11. Writ or writs of *subpœna ad testificandum* for any number of persons not exceeding three, and the same for every additional number not exceeding three	0	6	8	0	6	8

Notices to witnesses. — Notices to witnesses that action is not in paper and that witnesses need not attend, will not usually be allowed, but notices sent by post to witnesses to attend on a day certain will be allowed at the rate of 3*s.* for the first letter and 1*s.* 6*d.* for each subsequent letter. An allowance of 6*s.* 8*d.* is usually made in the C. D. for attending a witness arranging for his attendance without a *subpœna*.

Allowances to witnesses.—See this (n.) at the end of this Appendix.

Subpœnas served on and allowances to witnesses not called.—See O. 65, r. 27 (9), (n.) "Unused Evidence."

Unnecessary Evidence.—See this (n.), O. 65, r. 27 (9).

App. N. Nos. 12—23. Writs, Summonses and Warrants.

12. Writ of *distringas*, pursuant to statute 5 Vict. c. 5	0	13	4	0	13	4

Writs of *distringas* were abolished by R. S. C. 1880, r. 21, now O. 46, r. 2. A notice takes the place of the writ, see O. 46, rr. 2—11. For the usual allowances in respect of such notice, see Scott's Guide to Costs, p. 317.

13. Writ of execution, or other writ to enforce any judgment or order . .	0	7	0	0	10	0
14. And if more than four folios, for each folio beyond four	0	1	4	0	1	4

Charges subsequent to issue of writ of execution.—Where the writ has to be lodged with the sheriff, there is allowed, attending sheriff and for warrant, 6*s.* 8*d.* For further charges in respect of the several writs of execution, see Scott's Guide to Costs: Attachment (p. 318); Fieri Facias (p. 426); Elegit (p. 427); Possession (p. 427); Equitable Execution by Appointment of Receiver (p. 429). And as to Interpleader, pp. 432—435.

Sheriff's Fees and Poundage.—See Fees under Sheriffs Act, 1887, pp. 236 and 239, *post*.

15. Procuring a writ of execution or notice to the sheriff, marked with a seal of renewal	0	6	8	0	6	8
16. Notice thereof to serve on sheriff .	0	4	0	0	5	0
17. Any writ not included in the above	0	7	0	0	10	0

Writ of Commission is chargeable under this allowance. There is no discretion to increase the fee whatever the length of the writ.

18. These fees include all indorsements and copies, or præcipes, for the officer sealing them, and attendances to issue or seal, except where otherwise provided, but not the Court fees.

"**But not the Court Fees.**"—It does not follow that the Court fees are *included* in the subsequent allowances in this Appendix (see W. N. (76), 22).

19. Summons to attend at Judge's Chambers	0	3	0	0	6	8
20. Or if special, at taxing officer's discretion, not exceeding	0	13	4	1	1	0

"**If special.**"—Among the summonses in the C. D. which are usually *not* considered to be special are summonses for time, to proceed, and for order in terms of annexed minutes.

21. Copy for the judge, when required.	0	2	0	0	2	0
22. Or per folio	0	0	4	0	0	4

"**When required.**"—A copy is always required in the C. D. In the Q. B. D. only 1*s.* is usually allowed for the copy for the judge.

23. Originating summons for proceedings in chambers in the Chancery Division at taxing officer's discretion, not exceeding	1	1	0	1	1	0

Fee to settle.—A fee to counsel to settle an originating summons is allowed in the C. D. except where the summons is of a simple character.

Amendment.—An originating summons being a pleading, it would seem that the same charges may be made as in the case of any other pleading (Jud. Act, 1873, s. 100, and cf. Fees 72, 90, and 122, *post*). In addition, attendances at chambers obtaining fiat to amend (6*s.* 8*d.*), and at the central office to amend (6*s.* 8*d.*), are usually allowed. (See Scott's Guide to Costs, pp. 335, 339.)

Copies.—In addition to the copy for the judge allowed by Fees 25, 26, *post*, a copy for the central office at 2*s.* or 4*d.* per folio, H. S. or L. S., is allowed. A copy for service at the same rate is also allowed (see Chcy. C. O. 2nd Sch. Fees).

24. And attending to get same and duplicate sealed, and at the proper office to file duplicate and get copies for service stamped	0	13	4	0	13	4

This fee covers attendances both at the central office and at chambers including attending master to sign certificate of (no) previous assignment, and for appointment under O. 55, r. 4 D. The certificate itself is allowed at 5*s.*, which includes drawing and fair copy.

"Copies for service stamped."—Copies for service are not now stamped.

Notice of Appointment under O. 55, r. 4 D.—This is chargeable as a necessary and proper notice (1*s.* 6*d.* Fee, 51 *post*). Copies for service are covered by the fee for service.

25. Copy for the judge . . .	0	2	0	0	2	0
26. Or per folio	0	0	4	0	0	4
27. Indorsing same and copies under Order LV. r. 22	0	6	8	0	6	8

"Indorsing same, &c."—That is with the date of a new return day, where the summons has not been served in time.

SERVICES AND NOTICES.

Same Solicitor for both parties.—The fees for services and notices are not to be allowed where the same solicitor is for both parties, unless it be necessary for the purpose of making an affidavit of service (O. 65, r. 27 (6)); but this rule would not seem to apply if the solicitor appearing for both parties is not instructed to appear by the parties served until after they have been served.

	Lower Scale. £	*s.*	*d.*	Higher Scale. £	*s.*	*d.*
28. Service, or filing in lieu of service, of any writ, summons, warrant, interrogatories, petition, order, or notice on a party who has not entered an appearance, and if not authorised to be served by post . .	0	5	0	0	5	0

"Warrant."—Warrants on leaving, to bring in, and to tax in the office of the taxing masters of the Chancery Division were abolished by R. S. C. 1885, r. 43 (now O. 65, r. 19A).

App. N. Nos. 28—35. Services and Notices.

"**Party**" includes "every person served with notice of or attending any proceeding although not named on the record" (Jud. Act, 1873, s. 100).

"**Not authorised to be served by post.**"—See Fee 34, *post*, (n.) "Authorised to be, &c."

29. If served at a distance of more than two miles from the nearest place of business, or office of the solicitor serving the same, for each mile beyond such two miles therefrom	0	1	0	0	1	0
30. Where, in consequence of the distance of the party to be served, it is proper to effect such service through an agent (other than the London agent), for correspondence in addition. . . .	0	7	0	0	7	0

"**Correspondence.**"—This would usually be a letter sending down the documents for service and a letter sending the agent his charges.

"**Through an agent.**"—The agent's charges for service, if the service is effected within the jurisdiction, must be regulated according to Appendix N, and in the C. D. may include a letter (3*s.* 6*d.*) returning papers with an account of his charges; but in the Q. B. D. this fee (30) covers such a letter.

31. Where more than one attendance is necessary to effect service, or to ground an application for substituted service, such further allowance may be made as the taxing officer shall think fit.						
32. For service out of the jurisdiction such allowance is to be made as the taxing officer shall think fit.						
33. Service where an appearance has been entered on the solicitor or party .	0	2	6	0	2	6

"**Party.**"—For definition of "party," see this (n.), Fee 28, *ante*.

34. Or if authorised to be served by post	0	1	6	0	1	6

"**Authorised to be served by post.**"—The following documents are authorised to be served by post:—Notice of appearance (O. 12, r. 9); a summons (which includes a writ of summons), notice, or other document (except petitions to wind up) required to be served upon a company under Companies Act, 1862 (see O. 9, r. 8, (n.) "Where by any Statute provision is made"); or on a friendly society, a joint stock company under Act, 1845, or a railway company. As to service by post on contributories and creditors of a company and their solicitors under the Companies Act, 1862, see General Order, Nov. 1862, rr. 63, 64, and Buckley on Companies Acts, pp. 697—8. As to service by the company on members, see same Act, s. 95, and Buckley, p. 522.

35. Where any writ, order, and notice, or any two of them, have to be served together, one fee only for service is to be allowed.

"Have to be served together."—This restriction applies in the following cases: the service out of the jurisdiction of a writ of summons or of notice of such writ; the service of notice of motion with a writ; the service of notice of judgment under O. 16, r. 40; the service on a firm when the person in control of the business is served under O. 48A, r. 4, in which case the notice must be served with the writ; and in the case of service of notices to produce and admit, if served together.

In addition to the above fees, the following allowances are to be made:—

36. As to writs, if exceeding two folios, for copy for service, per folio beyond such two	0	0	4	0	0	4

Copy Writ of Summons for Service.—In the Q. B. D. it is usual to allow an uniform fee of 1*s.*; in the C. D. the charge is allowed at 4*d.* a folio on total length of the writ of summons whether written or printed, excluding the first two folios.

37. As to summons to attend at the Judge's Chambers, for each copy to serve	0	1	0	0	2	0
38. Or per folio	0	0	4	0	0	4
39. As to notices in proceedings to wind up companies, for preparing or filling up each notice to creditors to attend and receive debts, and to contributories to settle list of contributories . . .	0	1	0	0	1	0
40. And for preparing or filling up each notice to contributories to be served with a general order for a call, or an order for payment of a call	0	1	0	0	1	0

The fee of 1*s.* allowed by this and the preceding fee for preparing and filling up each notice covers the drawing of the notice.

Printing.—The provisions as to printing (Fee 57, *post*) do not apply to the notices named in this or the preceding Fee. or in Fee 43, *post*; see Fee 57 (n.).

41. And for drawing notice to be served on contributories or creditors of a meeting, per folio	0	1	0	0	1	0
42. For each copy of the last-mentioned notice to serve, per folio	0	0	4	0	0	4

Printing.—See (n.) to Fee 57, *post*.

43. For preparing or filling up for service in any other cause or matter, each notice to creditors to prove claims, and each notice that cheques may be received, specifying the amount to be received for principal and interest, and costs, if any .	0	1	0	0	1	0

See (nn.) to Fee 40, *ante*, which are applicable to this Fee.

Service.—The allowance for service of such notices is 1*s.* 6*d.*

App. N. Nos. 44—53. Services and Notices.

44. For preparing notice to produce on the trial or hearing of an action, or notice to admit	0	5	0	0	7	6
45. If special or necessarily long, such allowance as the taxing officer shall think proper, not exceeding per folio . . .	0	0	8	0	1	0
46. And for each copy, such allowance as the taxing officer shall think proper, not exceeding per folio	0	0	4	0	0	4

Effect of Fees 44—46.—If the notice to produce or admit is not more than five folios in length, or if over five folios is not "special and necessarily long," Fee 44 applies, and the proper allowance (including the copy for service) is 5*s.* L. S. and 7*s.* 6*d.* H. S. If the notice is over five folios in length *and* is "special and necessarily long," Fees 45 and 46 apply, and the proper allowance for preparing the notice and one copy is not more than 1*s.* a folio L. S. and 1*s.* 4*d.* H. S.

Copy for service.—There is, therefore, no allowance for a copy for service of notice to produce or admit unless the notice is over five folios and is also "special or necessarily long." Fee 46 must be read with Fee 45 and not with Fee 44. Except where the notice is "special and necessarily long" the Fee (55) for service, covers the copy for service.

Copies for Counsel, &c., are allowed at 4*d.* per folio. Copies of the notice to admit for admissions, and in Q. B. D. copies to exhibit to the affidavit of service are also allowed at 4*d.* a folio.

Affidavit of service of notices to produce and admit.—These affidavits are allowed, if made. And see O. 32, r. 8, and (nn.) and D. C. P. 604, 606, and D. C. F. 267.

"**Notice to admit,**" *i.e.*, either documents or facts.

Unnecessary documents.—If the notice to produce contains unnecessary documents, the party giving such notice has to bear the costs thereby occasioned (O. 32, r. 9).

47. For preparing notice of motion . .	0	3	0	0	5	0
48. Or per folio	0	1	0	0	1	0
49. Copy for service	0	1	0	0	1	0
50. Or per folio	0	0	4	0	0	4
51. For preparing any necessary or proper notice, not otherwise provided for, or any demand pursuant to Order 7, rr. 1 and 2	0	1	6	0	1	6
52. Or if special, and necessarily exceeding three folios, for preparing same, for each folio beyond three . . .	0	1	0	0	1	0
53. And for each copy for service, per folio beyond such three	0	0	4	0	0	4

"**Not otherwise provided for.**"—Among the notices which are not otherwise provided for, and which therefore come under this fee are: notice to admit or produce *not* on the hearing or trial of an action; notice to change solicitors, see (n.) "Notice to Change Solicitors," *infra*; of filing affidavits; of setting down the action on further consideration; of order made (where necessary); of trial; of intention to read evidence; of proceeding; of appointments before judge or master in Chambers; of settling or passing an order before a Registrar; to inspect or to produce for inspection under O. 31, r. 15, documents referred to in any pleading or affidavit; of judgment or order under O. 16, r. 40.

"**Demand pursuant to Order 7, rr. 1 and 2.**"—A demand pursuant to O. 7, r. 1, is a demand by or on behalf of defendant served with a writ of summons for disclosure by the solicitor whose name is endorsed on it, whether the writ is issued with his authority or privity. O. 7, r. 2 (which provided for disclosure as to partners), was repealed by O. 48A, R. S. C., June 1891, which substituted an application by summons to a judge (see O. 48A, r. 1).

"**Copy for service.**"—No separate fee is allowed for such copy unless the notice is special and necessarily exceeds three folios (Fee 53), except in the case of a necessary notice to accompany an order which is allowed at 4*d.* a folio by Fee 54 (see that fee and (n.) thereto).

Demands generally.—In the C. D. no fees are allowed for demands for copies or for any demand except under O. 7, r. 1; but in the Q. B. D. a fee is sometimes allowed in the case of a demand for certain affidavits, *e.g.*, affidavit of documents, and an affidavit in answer to interrogatories.

Notice to change Solicitors.—The costs of a notice to change solicitors are not usually allowed as between party and party or as between solicitor and client against a common fund, except in the case of a party changing his solicitor on attaining twenty-one years of age, or in the case of the death of the solicitor or dissolution of partnership.

Where allowed, the notice is chargeable as a necessary or proper notice under this Fee (51), with copy to file at the central office, and (in the C. D.) at chambers, at 1*s.* each.

Notice to settle or pass.—Only one set of notices to settle or pass before the Registrar are usually allowed except where an appointment is necessarily adjourned *sine die*.

Notice of Judgment or order under O. 16, r. 40.—Preparing the notice endorsed on the original judgment or order comes within Fee 51. The copy notice is allowable under Fee 54.

54. Copies for service of interrogatories and petitions, and of orders with necessary notices (if any) to accompany, per folio 0 0 4 0 0 4

"**Orders with necessary notices, &c.**"—Among such notices are a notice of judgment or order under O. 16, r. 40, and a memorandum or notice endorsed on a judgment or order under O. 41, r. 5.

55. Except as otherwise provided, the allowances for services include copies for service.

56. Where notice of filing affidavits is required, only one notice is to be allowed for a set of affidavits filed, or which ought to be filed together.

"**Is required.**"—It is usual to give notice of filing to the opposite side in the case of all affidavits except affidavits of service.

57. In proceedings to wind up a company, the usual charges relating to printing shall be allowed in lieu of copies for service, where the fee for copies would exceed the charges for printing, and amount to more than £3.

Application of Fee.—This fee applies only to copies of notices to be served on contributories or creditors of a meeting (Fee 43), and to copies for service of summonses and orders. It does not apply to the notices mentioned in Fees 39, 40, and 43, where each notice served varies in some respects, and where a distinct fee is provided for each notice served.

App. N. Nos. 58—61. Appearances.

58. Where any appointment is or ought to be adjourned, service of a notice of the adjournment, or next appointment, is not to be allowed.

Notice to Party not attending.—A notice of adjournment or of the next appointment given by direction of the judge to a person not attending at the appointment which is adjourned, would seem to be an exception to this rule.

APPEARANCES.

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
59. Entering any appearance . . .	0	6	8	0	6	8
60. If entered at one time, for more than one person, for every defendant beyond the first	0	1	0	0	2	0
61. If a person appearing to a writ of summons to recover land limits his defence by his memorandum of appearance, in addition to the above	0	6	8	0	6	8

"**Entering.**"—That is at the Central Office under O. 12.

Notice of appearance.—This is a necessary and proper notice (Fee 51, *ante*). Service of the notice may be either in the ordinary way or by post (O. 12, r. 9). The fee for non-postal service (2*s.* 6*d.*) is always allowed in practice, except in proceedings to wind up a company.

Search for appearance.—There is no provision for this in Appendix N. In the Sched. Costs Hil. T. 1853, under C. L. P. Act, 1852, the allowance for all common searches was 3*s.* 4*d.*, and the same allowance is now made in the C. D. and Q. B. D. for a search for appearance. If a certificate of non-appearance is also taken, the proper allowance would seem to be 6*s.* 8*d.* (cf. Chcy. C. O. 2nd Sched. Fees, "attending to procure certificate of pleadings, 6*s.* 8*d.*").

Instructions.

INSTRUCTIONS.

Documents and proceedings for which no fees for instructions are allowed.—There is no provision either in this Appendix or elsewhere, either as between party and party or solicitor and client, for instructions in respect of the following proceedings or documents:—Accounts, advertisements, admissions, pedigree, certificate of result of sale, particulars of sale, conditions of sale, abstract of title; to move (except originating motion); to appear on a motion (except originating motion); to initiate or defend any interlocutory proceedings; to counsel to settle documents drawn by the solicitor who is allowed the fee for drawing; for brief on an interlocutory motion (other than a motion for injunction, or an originating motion); brief on any other interlocutory application: brief on further consideration where the order for accounts and enquiries was made in Court; brief on appeal where witnesses are *not* to be examined or cross-examined; brief on hearing of petition. In relation to the above-mentioned documents and proceedings, proper and necessary attendances and letters are allowed in detail as between solicitor and client; and in some special cases as between party and party also.

Documents drawn by the other side.—Observations for the instruction of counsel in settling documents drawn by the other side may be charged in some cases as between party and party; as, for instance, where counsel has to settle minutes, statement of facts, or deeds, which have been drawn by the other side.

Accounts, Pedigrees, Surcharges, Advertisements, and other Documents for use in Chambers.—There is no fee in Appendix N. for instructions for accounts, &c., for use in chambers. Instructions for statement of facts are allowed under Fee 72A, *post*.

Case for Counsel.—It is not usual in the C. D. to allow as between party and party instructions for a case for counsel. As between solicitor and client it would seem proper to allow in detail the work (if any) performed in obtaining instructions.

Compromise—Instructions to agree.—There is no fee allowed for instructions to agree to a compromise, but both as between party and party and as between solicitor and client charges are allowed for the necessary work in and about effecting a successful compromise.

Pedigree.—No instructions are chargeable for pedigrees, but the attendances and letters necessary for the preparation of the pedigree are usually allowed in detail.

62. To sue or defend	0	6	8	0	13	4

Increase of this Fee: discretion of taxing officer.—See (n.) "Increase of Allowances," &c., at the beginning of this Appendix.

Application of Fee.—This fee would seem to apply only to instructions at the commencement of the original proceedings in an action or matter, and to instructions on behalf of parties added by amendment or by order to carry on or served with notice of judgment or order. No fee is allowed for instructions to initiate or defend any interlocutory proceeding in an action or matter, except in the case of a person not a party to the action or matter, who is respondent to a petition in a pending cause or matter.

Instructions to move.—These are not allowed except on an originating motion, see *S.* v. *K.*, 30 Sol. Jo. 229.

63. For statement of claim or special case	0	13	4	2	2	0

Increase of this Fee: discretion of taxing officer.—See (n.) "Increase of Allowances," &c., at the beginning of this Appendix.

64. For indorsement of writ of summons when no further statement of claim	0	13	4	1	1	0
65. For originating summons, 6*s.* 8*d.*, or not to exceed	1	1	0	1	1	0
66. For defence or further defence .	0	6	8	0	13	4
67. For counterclaim	0	6	8	0	13	4
68. For reply when defendant sets up a counterclaim	0	13	4	1	1	0
69. For reply or further reply in any other case with or without joinder of issue	0	6	8	0	13	4
70. For confession of defence . .	0	6	8	0	13	4
71. For joinder of issue without other matter	0	6	8	0	13	4

Increase of these Fees (66—71): *discretion of taxing officer.*—As to

App. N. Nos. 71—73. Instructions.

the discretion of the taxing officer to increase this Fee (71) and the preceding Fees 66 to 70 both inclusive, see (n.) "Increase of Allowances," &c., at the beginning of this Appendix.

"**Joinder of Issue.**"—Under the present rules the delivery of a mere joinder of issue seems unnecessary (see O. 27, r. 13, and O. 23, r. 1, (n.) "When Reply not necessary.") But a joinder of issue is necessary where the plaintiff desires to proceed to trial without waiting till the pleadings would otherwise be closed, see *Robinson* v. *Caldwell*, (1893) 1 Q. B. 519. If the taxing officer considers a joinder of issue unnecessary he sometimes allows a fee to counsel to advise whether any pleading beyond a joinder of issue is necessary.

72. For special petition, any other pleading (not being a summons), and interrogatories for examination of a party or witness 0 6 8 0 13 4

Increase of this Fee: discretion of taxing officer.—A petition would seem to come within the rule (O. 65, r. 27 (1)), giving discretion to the taxing officer to make an increased allowance for instructions, &c., as it is a pleading (see Jud. Act, 1873, s. 100, cited *supra*, and *cf.* wording of this fee and of Fees 90 and 122).

"**Special Petition.**"—Petitions presented in an action for certain purposes, such as to carry on proceedings or to add parties, would seem to be petitions which are not special and so not within this fee. Instruction to add parties (Fee 76) would be chargeable in the case of a petition to add parties.

"**Pleading.**"—Pleading includes "any petition or summons," and also "the statements in writing of the claim, or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counterclaim of a defendant" (J. A. 1873, s. 100). Pleading would, therefore, seem in this Appendix to include (except where otherwise stated) a writ of summons where the indorsement of claim is specially indorsed (as to which, for purposes of taxation, see Fee 2, (n.) "If special"), a summons to attend at judge's chambers and an originating summons, and a petition whether originating proceedings or not. In this Fee (72) pleading does not include either a summons or any petitions which are not special.

Particulars of breaches and objections.—See Fee 94, *post*, (n.) "Instructions."

72A. For statement of facts such fee may be allowed as the taxing officer shall think fit, having regard to all the circumstances of the case.

Added by R. S. C. 25 Feb. 1895.

73. To amend any pleading . . . 0 6 8 0 13 4

"**Any pleading.**"—For definition of pleading, see J. A. 1873, s. 100, *post*, Pt. V., cited in (n.) "Pleading" to Fee 72.

Charges for amendment.—The proper charges for the amendment of a pleading which may be allowed to either plaintiff or defendant are:

(1) *Where a written pleading is amended in writing.*—Instructions Fee (73); drawing (Fees 90, 91); copy of pleading as amended to deliver (Fee 103); attending to deliver (Fee 138); copies for counsel or judge at 4*d.* a folio (Fee 103); perusal (Fees 124, 125).

(2) *Where a written pleading is printed on amendment (if the total*

length exceeds ten folios the pleading must be printed, O. 19, r. 9).—Instructions and drawing as in (1): copy for printer of whole pleading as amended and the usual charges for printing and printed copies (Fees 104—118); attending to deliver (Fee 138); perusal (Fees 126, 127).

(3) *Where a printed pleading is amended in writing.*—Instructions and drawing as in (1); inserting amendments in copy to deliver or file and in copies for counsel or for court (Fees 120, 121); attending to deliver (Fee 138); perusal (Fees 124, 125).

(4) *Where a printed pleading is reprinted on amendment.*—Instructions and drawing as in (1); copy amendments for the printer (Fee 104); examining the whole reprint (Fee 105); and other charges for printing (Fees 106—118); attending to deliver (Fee 138); perusal (Fees 126, 127, and see (n.) thereto). (See Scott's Guide to Costs, pp. 239, 283.)

Amended Petition.—In the case of a necessary and proper amendment of a petition the charges for the amendment of a pleading are allowable, and in addition the following charges are usually allowed: attending registrar for fiat, 6*s.* 8*d.* (See Scott's Guide to Costs, p. 364.)

Amendment of Statement of Claim, Set-off, or Counterclaim without leave.—By O. 28, r. 13, the costs of any amendment without leave of statement of claim, whether indorsed on the writ or not, or set-off, or counter-claim, shall be borne by the party making the amendment unless otherwise ordered.

Amendment by order.—The costs of the amendment of a pleading by order are in the discretion of the Court (O. 28, r. 6, and see O. 28, r. 1, (n.) "Upon such terms as may be just").

Amendment of Pleadings Generally.—See, as to costs occasioned to a defendant by the amendment of the plaintiff's pleadings where the plaintiff is directed to pay the defendant's costs of the cause, O. 65, r. 27 (31); and as to the costs occasioned to a defendant where the plaintiff's costs of amendment are disallowed on taxation as having been unnecessary, O. 65, r. 27 (32), and (nn.) thereto.

74. For affidavit in answer to interrogatories, and other special affidavits . 0 6 8 0 6 8

Increase of this fee: discretion of taxing officer.—See (n.) "Increase of Allowances," &c., at the beginning of this Appendix.

"**Special affidavits.**"—Affidavits of service are not considered to be "special affidavits."

Affidavits sworn by solicitor or solicitor's clerk.—No fee for instructions for an affidavit made by the solicitor to the party whose costs are being taxed or by his clerk is allowed, except where the deponent makes calculations or enquiries on which to found the affidavit.

Journeys to obtain instructions.—Where a solicitor cannot procure the instructions for a necessary affidavit without taking a journey for the purpose or without instructing an agent, he may charge in his bill of costs, "Instructions for affidavit including journey to ————, and paid expenses," or as may be, showing shortly the work done which is proper to be covered by the fee for instructions. See also O. 65, r. 27 (9).

Attendances on Deponent to settle or read over.—These are covered by this fee together with the fees for drawing and attendance to swear (O. 65, r. 27 (5)).

Affidavit of service.—The fee for instructions, and Fee 95 (drawing), and Fee 149 (attending to swear), are not considered to apply to an ordinary affidavit of service, as these fees only apply to *special* affidavits, and by old practice an ordinary affidavit of service has not been considered to be a special affidavit. The fee allowed in the C. D. to cover

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both drawing and engrossing is 1*s.* a folio, according to the length of the affidavit. In the Q. B. D. it is customary to allow an uniform charge of 5*s.* for drawing and engrossing an affidavit of service, irrespective of its length. The costs of an affidavit of service on a party who appears at the hearing will not be allowed. See O. 52, r. 13, (n.) "Affidavit of Service," &c.

75. To appeal against order of court or judge, and to appear thereon . . . 0 13 4 1 1 0

Application of Fee.—This fee is for solicitor's instructions to appear on appeal, and applies to an appeal to a Divisional Court as well as to the Court of Appeal.

76. To add parties by order of court or judge 0 6 8 0 13 4

Application of Fee.—This fee applies to applications for an order of Court or judge giving leave to add parties, whether the parties are added by amendment of writ of summons, originating summons or petition, or by an order giving leave to carry on proceedings under O. 17, r. 4.

Amendment of Writ of Summons by adding Parties.—As to charges that may be allowed in this case, see Fee 1, *ante*, (n.) "Amendment of Writ of Summons."

Petition to add Parties.—See Fee 72, *ante*, (n.) "Special Petition."

77. For counsel to advise on evidence when the evidence in chief is to be taken orally 0 6 8 0 6 8
78. Or not to exceed 1 1 0 1 1 0

Application of Fees.—These fees (77, 78) are, as a rule, only allowed once as between party and party, but see O. 65, r. 27 (15), (n.) "Advice of Counsel," &c. Strictly, these fees apply only where the evidence in chief is taken orally, but where an action is tried on affidavit evidence, and no fee for settling affidavits is charged, it is usual to allow a fee to counsel to advise on evidence, if charged. Under O. 65, r. 27 (15), the taxing officer has discretion to allow such advice of counsel on the pleadings, evidence and proceedings in any cause or matter as he thinks just and reasonable.

Counsel settling affidavits.—Such costs of procuring counsel to settle such special affidavits as the taxing officer thinks proper to be settled by counsel are to be allowed, but only one fee for settling all the affidavits proper to be settled which are or ought to be filed at the same time (O. 65, r. 27 (15), and (n.) "To settle," &c.).

79. For counsel to make any application to a court or judge where no other brief 0 6 8 0 10 0

"**Where no other brief.**"—This is usually interpreted to mean that where the brief contains no observations, or where it does not with observations contain more than five folios of drawing, this fee may be allowed as a minimum fee for preparing the brief in addition to copies of documents given to counsel. If the brief exceeds five folios in length then 1*s.* a folio is allowed for drawing.

Premature delivery of briefs.—This is a question for the taxing officer to decide. For decided cases, see O. 65, r. 27 (30), (n.) "Incomplete affidavits or pleadings."

80. For brief on motion for special injunction 0 13 4 1 1 0

Increase of this Fee: discretion of taxing officer.—See (n.) "Increase of Allowances," &c., at the beginning of this Appendix.

Instructions on motion.—A motion for special injunction is the only motion except a motion for judgment on which a fee is allowed for instructions for counsel's brief. See also *S.* v. *K.*, 30 Sol. Jo. 220.

Instructions to move.—See this (n.) Fee 62, *ante*.

"**Special Injunction.**"—A special injunction is an injunction which is the substantial object of the suit.

81. For brief on hearing or trial of action upon notice of trial or notice for judgment given, whether such trial be before a judge, with or without a jury, or before an official or special referee, or on trial of an issue of fact before a judge, commissioner, or referee, or on assessment of damages 1 1 0 2 2 0

Application of Fee.—This fee applies only to a hearing or trial on affidavit evidence, while Fee 82 applies to a hearing on trial when witnesses are examined or cross-examined. This Fee (81), together with what may be allowed as instructions for affidavits, covers all the solicitor's instructions preparatory to drawing the brief. See also O. 65, r. 27 (9), as to allowing just and reasonable charges properly incurred in procuring evidence. This fee, it would seem, applies also to the hearing of a special case.

Hearing of an originating petition.—This fee does not apply to the hearing of an originating petition, as such hearing is not upon notice of trial or notice for judgment given. No instructions can therefore be allowed for the brief on such hearing.

82. For such brief, and for brief on the hearing of an appeal when witnesses are to be examined or cross-examined, such fee may be allowed as the taxing officer shall think fit, having regard to all the circumstances of the case, and to other allowances, if any, for attendances or witnesses and procuring evidence.

"**Other allowances, if any,**" **&c.**—Attendances on witnesses and attendances procuring evidence are not usually allowed in detail as between party and party, but are taken into consideration in the fee allowed for instructions for brief.

"**Procuring evidence.**"—The taxing officer is to allow such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence and the attendance of witnesses (O. 65, r. 27 (9), and (nn.) thereto, and see, at the end of this Appendix (n.) "Allowance to Witnesses").

Journeys and payments—necessarily taken and paid by the solicitor in procuring the evidence for the brief should be charged by the solicitor

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as "Instructions for brief, including journey to —— and paid expenses," or "Instructions for brief, including payments to agent, £ , for procuring evidence," or as may be, showing shortly the nature of the work done and the payments made.

Allowances to witnesses.—See Table of Allowances to Witnesses from the Sched. Fees, Hil. T., 1853, under C. L. P. Act, 1852, reprinted at the end of this Appendix; O. 65, r. 27 (9), and (nn.) thereto; and Scott's Guide to Costs, p. 73.

Expert witnesses.—See O. 65, r. 27 (9), and (n.) "Scientific witnesses," thereto.

Shorthand-writer's notes.—See this (n.), O. 65, r. 27 (9).

Unused evidence.—See this (n.), O. 65, r. 27 (9).

Briefs not delivered.—Where an action is concluded before the delivery of briefs, the taxing officer will allow charges for attendances on witnesses and procuring evidence under O. 65, r. 27 (9), in detail in lieu of instructions for brief, and see O. 65, r. 27 (30), (n.) "Incomplete affidavits or pleadings."

Premature delivery of briefs. — The costs of briefs prematurely delivered are not to be allowed (O. 65, r. 27 (49), and r. 27 (30), (n.) "Incomplete affidavits").

82A. For brief on hearing of an originating summons, or hearing of a summons under section 10 of the Companies (Winding-up) Act, 1890 1 1 0 2 2 0

Added by R. S. C. 25 Feb. 1895.

83. The fees for instructions for brief are to apply to a hearing on further consideration in Court only where an order for accounts and inquiries was made without such hearing on trial, as above mentioned.

Parties added subsequent to order for accounts and inquiries, or served with notice of judgment.—Where counsel is briefed for a hearing on further consideration in court on behalf of such new parties, instructions for such brief are, it would seem, chargeable only if the order for accounts and inquiries was made without such hearing on trial as is mentioned in Fee 81, *supra*, that is, without hearing upon notice of trial or notice for judgment given.

DRAWING PLEADINGS AND OTHER DOCUMENTS.

Drawing Pleadings and other Documents.

Improper, vexatious, or unnecessary matter in documents.—As to power of taxing officer to inquire into the above, with or without direction from the Court, and to disallow the costs so occasioned, see O. 65, r. 27 (20), and (nn.); see further as to prolixity in pleadings, O. 19, r. 2, 5, and in affidavits, O. 38, rr. 2, 3.

Copies of documents set out in pleadings and other proceedings.—A fee for drawing is not allowed in respect of documents or extracts from documents, including letters, which are set out verbatim in affidavits or briefs; but this rule does not apply to pleadings, petitions, summonses, or other proceedings, which are as a rule allowed at their full length without any deduction in respect of documents copied therein.

Counsel settling pleadings.—The taxing officer has discretion to allow under O. 65, r. 27 (15), just and reasonable costs of procuring the advice of counsel on the pleadings and of counsel settling such pleadings and special affidavits as the taxing officer thinks proper to be settled by counsel.

App. N. Nos. 83—91. Drawing Pleadings and other Documents.

Cases for Counsel.—The allowance for drawing cases for counsel in other than conveyancing business is 1*s.* per folio; in conveyancing cases the allowance is 2*s.* a folio in ordinary cases under sched. ii. of the Sol. Rem. Act, 1881, and see *Re Mahon*, (1893) 1 Ch. 507.

Copies for solicitor, agent, or client, or for counsel to settle.—By O. 65, r. 27 (2), the fees allowed for drawing pleadings and other documents include any such copies.

Consent of next friend, guardian, or trustee.—A minimum allowance of 5*s.* is usually allowed in the C. D. for drawing and fair copy of such consent.

Lis Pendens.—No allowance is made in respect of a *lis pendens* as between party and party. The charges allowed as between solicitor and client are: drawing the minute or memorandum and copy, 5*s.*; and attending to register, 6*s.* 8*d.*

Certificate of result of sale.—The usual allowance for preparing certificate of sale and attending auctioneer signing is 13*s.* 4*d.*

Judgment.—The allowance in the Q. B. D. for drawing is 3*s.* 4*d.* (see Sched. Fees, Hil. T. 1853), and for attending to enter judgment 6*s.* 8*d.*

Requests to paymaster-general.—As to requests to the paymaster-general and other documents for the purpose of satisfying his requirements, see (n.) "Paymaster-general," under "Attendances," *post.*

Minutes of Orders.—See this (n.) Fee 100, *post.*

Power of Attorney in a foreclosure action.—The proper charges for a necessary power of attorney to attend and receive mortgage money will be allowed as between party and party.

Report of Official Receiver under Companies Act.—See this (n.) Fee 100, *post.*

	Lower Scale. £	*s.*	*d.*	Higher Scale. £	*s.*	*d.*
84. Statement of claim . . .	0	10	0	1	1	0
85. Or per folio	0	1	0	0	1	0
86. Defence	0	5	0	0	10	0
87. Or per folio	0	1	0	0	1	0
88. Counterclaim	0	5	0	1	1	0
89. Or per folio	0	1	0	0	1	0

Increase of these Fees: discretion of taxing officer.—See (n.) "Increase of Allowances," &c., at the beginning of this Appendix.

90. Reply, with or without joinder of issue, confession of defence, joinder of issue without other matter, and any other pleading (not being a petition or summons) and amendments of any pleading .	0	5	0	0	10	0
91. Or per folio	0	1	0	0	1	0

Increase of this Fee: discretion of taxing officer.—See (n.) "Increase of Allowances," &c., at the beginning of this Appendix.

"**Not being a Petition or Summons.**"—As to drawing a petition, see Fee 95, *infra.* As to summonses, see Fee 23 (originating summons) and Fees 19, 20 (summons to attend at judge's chambers), *ante.*

"**Amendments of any pleading.**"—Pleading here includes both petitions and summonses, whether originating or otherwise, see Fee 72, *ante*, (n.) "Pleading."

Definition of Pleading.—See Fee 72, (n.) "Pleading," *ante.*

App. N. Nos. 92—99. Drawing Pleadings and other Documents.

92. Particulars, breaches, and objections, when required, and one copy to deliver 0 5 0 0 6 8

93. Or such amount as the taxing officer shall think fit, not exceeding per folio 0 0 8 0 1 0

94. If more than one copy to be delivered, for each other copy per folio . 0 0 4 0 0 4

Instructions.—No fee is allowed for instructions for particulars. In the C. D., in the case of particulars of breaches and objections, the fees for instructions for statement of claim or statement of defence are sometimes increased to cover additional work.

95. Special case, whether original or in an action, affidavits in answer to interrogatories and other special affidavits, special petitions, and interrogatories, per folio 0 1 0 0 1 0

Increase of this Fee: discretion of taxing officer.—See (n.) "Increase of Allowances," &c., at the beginning of this Appendix.

Counsel settling affidavits.—The taxing officer has discretion to allow the costs of procuring counsel to settle affidavits, but only one fee is to be allowed for all affidavits which are or ought to be filed at the same time (see O. 65, r. 27 (15)), and see Fee 78, *ante*, and (nn.) thereto.

Affidavit of increase.—This is usually required in the Q. B. D. only. See O. 65, r. 27 (16), and r. 27 (37), (n.) "Affidavit of Increase."

96. Brief, on trial or hearing of cause, issue of fact, assessment of damages, examination of witnesses, special case and petition before a court or judge, sheriff, commissioner, referee, examiner, or officer of the court, when necessary and proper in addition to pleadings, including necessary and proper observations, per folio . 0 1 0 0 1 0

Briefs other than those mentioned in this fee.—It is usual in both divisions to allow 1*s.* a folio for drawing brief observations for counsel.

Brief to hear judgment.—This is allowed at a fee of 6*s.* 8*d.* (by virtue of Fee 79) when judgment is delivered in a term subsequent to the term in which the trial of the action takes place or where some considerable period elapses in the same term between the trial and the delivery of the judgment. By old practice in the C. D. a brief to hear judgment is allowed only in the case of actions commenced by writ of summons. A fee with brief to hear judgment and a term refresher may, in some cases, both be allowed in the same term: Cf. *Levetus* v. *Newton*, 28 Sol. J. 166, and Fee 201, *post* (n.), "Term refreshers."

Premature delivery of briefs.—See this (n.) Fee 160, *post*.

97. Brief on application to add parties 0 6 8 0 10 0

98. Or per folio 0 1 0 0 1 0

99. Brief on further consideration, per sheet of 10 folios 0 6 8 0 6 8

What may be included in the brief on further consideration.—The brief on further consideration should include only the judgment, any necessary orders, and the master's certificate without evidence read and without schedules. It is usual to recite the judgment and certificate in the third person, but for purposes of allowances the brief is considered to be drawn at the full length of the judgment, orders (if any), and certificate, less the schedules, if any. The schedules should only be given if necessary for counsel, and in respect of them, if given, an allowance for copying at 4*d.* a folio will be made. Necessary and proper observations may also be allowed at 1*s.* a folio drawing, and 4*d.* a folio for copying. Copies of affidavits filed since the certificate, material to the further consideration, may be allowed at 4*d.* a folio (D. C. F. 609, 610, and (nn.)).

100. Accounts, statements, and other documents for the judge's chambers, when required, not exceeding per folio . . 0 0 8 0 1 0

Increased allowance in respect of accounts.—The master or judge has power to make special allowance for work done in Chambers, see O. 65, r. 27 (12).

"**Accounts.**"—*Receivers' and executors' accounts.*—These, if for use in chambers, come within this fee.

"**Other documents.**"—This would cover surcharges, statements of facts, pedigrees, &c.

Certificate of (no) previous assignment.—This is usually allowed at 5*s.* for drawing and fair copy. In the case of a certificate of previous assignment no allowance is made for obtaining the signature of the master under O. 5, r. 9 (e).

Master's certificate.—This Fee (100) would apply to drawing the body of the certificate and the schedules (where either are drawn by the solicitor). As to copies allowed, see this (n.), Fee 173.

Liquidator's accounts.—No fee for drawing is chargeable, as they should be drawn by the liquidator.

Residuary, legacy, and succession accounts.—A *quantum meruit* is usually allowed to cover instructions and drawing.

Report of Official Receiver.—A special report of the official receiver under Companies Winding-up Rules, 1890, s. 78, is a statement under this fee (*Re Anglo-Austrian Printing Union*, (1894) 2 Ch. 622).

101. Advertisements to be signed by judge's clerk, including attendance therefor 0 6 8 0 13 4

Advertisements.—For advertisements other than those to be used in judge's chambers the usual allowance for drawing is 1*s.* a folio, L. S. and H. S., or a *quantum meruit*.

102. Bill of costs for taxation, including copy for the taxing officer . . . 0 0 8 0 0 8

Notices to tax.—In the C. D. all notices to tax are given by the taxing officer under O. 65, r. 19D. and no allowance to the solicitor for giving notice is now made. In the Q. B. D. notice of taxation is still given by the solicitor (O. 65, r. 16), and a fee is allowed as for a necessary or proper notice (Fee 51, *ante*).

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Default of appearance.—No notice of taxation is necessary where the defendant has not appeared in person, or by his solicitor or guardian (O. 65, r. 17).

Disallowance of costs of drawing and copying the bill of costs.—As to the disallowance of the costs of drawing and copying the bill and of attending the taxation as a penalty for neglect and delay, see O. 65, rr. 19C, 19G, and 27 (38A); and as to such disallowance where the bill is reduced by a sixth on taxation, see r. 27 (38B).

Copy of bill of costs for the opposite party.—It is not usual to allow a copy for the opposite party in the C. D., but the party entitled to tax is allowed to take a copy and charge for the payment in his costs (if any). In the Q. B. D. it is usual to allow a copy for the opposite party at 4*d.* a folio (see Sched. Fees, Hil. T. 1853, under C. L. P. Act, 1852).

Copies.

COPIES.

Copies for solicitor, agent, or client, or for counsel to settle.—As to such copies being covered by the allowance for drawing, see this (n.) before Fee 84, *ante*.

Copies of documents set out in pleadings and other proceedings.—As to the allowance of costs where copies of documents are set out verbatim in pleadings and other documents, see this (n.) before Fee 84, *ante*.

	Lower Scale. £ s. d.	Higher Scale. £ s. d.
103. Of pleadings, briefs, and other documents where no other provision is made, at per folio	0 0 4	0 0 4

"**Where no other provision is made.**"—Other provision is made in Appendix N. in respect of copies of writs (for service) (Fee 36); summons to attend at judge's chambers (Fees 21, 37, 38); originating summons (Fees 25, 26); notice of a meeting (Fee 42); notice to produce or admit (Fee 46); notice of motion (Fee 50); a necessary or proper notice (Fee 53); interrogatories, petitions, and orders with notices (Fee 54). Also as to copy of particulars, breaches, and objections to deliver (Fees 92–94). See also, as to cases where the fee for service covers the copy for service, Fee 55; as to copies of writs which are covered by the fee for the writ, Fee 18; and as to notices for which a fee for preparing each notice is allowed, Fees 39, 40, and 43.

Copies of Documents in Possession of other Party.—As to taking copies of documents or extracts of documents produced by another party at 4*d.* a folio, see O. 65, r. 27 (18), and (nn.) thereto.

Copies of Documents and Proceedings delivered by Parties and their Solicitors.—The charge for such copies, if written, is 4*d.* a folio (Chcy. C. O. Fees and Charges, Reg. IV. r. 1, and cf. (n.) "Old Allowances," at the beginning of this Appendix, and see O. 66, r. 7 (i, n.)). As to printed copies, see Fee 110, *post*.

Paupers.—The charge for copies furnished to or delivered by a person suing *in formâ pauperis* is 1½*d.* a folio (Chcy. C. O. Fees and Charges, Reg. IV. rr. 2, 3, and cf. (n.) and rules referred to in preceding (n.)).

Copies for the Judge.—These come within this fee except in the case of prints of pleading, special case or petition of right, for which the allowance is 2*d.* a folio L. S. and 3*d.* a folio H. S. (Fee 115). In the case of printed documents, not printed at the solicitor's expense, such as particulars and conditions of sale or the articles of association of a company, no charge can be allowed for the prints, neither can any fee be allowed in respect of prints of bills of complaint, answers or evidence filed prior to

the Judicature Rules, see (n.) "But for no other purpose," Fee 111, *post*.

A copy of every material document for each judge will be allowed on taxation, see O. 58, r. 8, (n.) "Papers for the judges," and O. 65, r. 27 (18), (n.) "Copies for use of Court." And cf. *Nell* v. *Electric Wiring, &c. Co.*, 10 Times Rep. 30.

Copies for counsel.—These come within this fee except in the case of printed copies of pleadings, special case, petition of right, and evidence for which the allowance is 2*d*. a folio (Fee 117, and (n.) thereto). As to what documents may be copied for counsel, see (nn.) to O. 65, r. 27 (18). And see, as to printed documents not printed at the solicitor's expense, (n.) "Copies for the judge," *supra*. Only copies of material documents in the affidavit of documents will be allowed (*Millard* v. *Burroughes*, W. N. (80) 4). As to copies of co-defendants' pleadings, cf. (n.) "Co-defendants' pleadings," before Fee 122, *post*.

Shorthand-writer's notes.—As between party and party the costs of shorthand notes of the judgment appealed from (but not of the evidence) are allowed as part of the costs of appeal. As to the allowance of copies of shorthand-writer's notes of evidence, see O. 65, r. 27 (9), (n.) "Shorthand-writer's notes."

Affidavit of documents: office copy.—No office copy of an affidavit of documents can be allowed, see O. 65, r. 27 (54), where it is provided that "it shall not be necessary to take an office copy of an affidavit of discovery of documents, and the copy delivered by the party filing it may be used against such party." Copies for counsel are not usually allowed, except where the notices to admit and produce refer to the affidavit without setting out the documents. The delivered copy should be in court for use if required (*Leslie* v. *Cure*, 31 Sol. Jo. 11).

Type-written and lithographed Copies.—Where several copies are taken *simultaneously* by a type-writer, 4*d*. a folio will not be allowed for each copy (*Re Morse*, 7 Times Rep. 591). In that case the taxing-master allowed on review, 4*d*. per folio for the first copy, and 3*d*. per folio for each duplicate produced by the carbon paper. It has been the practice to allow a solicitor to make all necessary copies of documents (to which the rules as to printing do not apply) as he thinks proper and at his own cost, he being allowed 4*d*. a folio for each copy. This rule is still adhered to where a solicitor has copies lithographed, as, for instance, copies of a petition for service or for the use of counsel and court.

104. Where, pursuant to Rules of Court, any pleading, special case, or petition of right, or evidence is printed, the solicitor of the party printing shall be allowed for a copy for the printer (except when made by the officer of the court) at per folio	0	0	4	0	0	4

"**Where, pursuant to Rules of Court,**" &c.—*Rules directing printing* are: as to pleading, O. 19, r. 9; amendments of a pleading, O. 28, r. 8; special case, O. 34, r. 3; affidavits, O. 38, r. 30, and O. 66, rr. 4, 6; evidence in Court of Appeal, O. 58, rr. 11, 12; depositions, O. 66, rr. 5, 6; affidavit in answer to interrogatories, O. 31, r. 9; writs of summons, O. 5, r. 10.

General regulations for printing.—As to quality of paper, &c., O. 66, r. 3; as to copies for printer, payment for copies, &c., O. 66, r. 7.

"**Except when made by an officer of the Court.**"—The copy for printer is only made by an officer of the Court in the case of a deposition (O. 66, r. 7 (b)), or other documents on the file of the Court.

Registrar's Orders.—Printed copies of orders drawn up in the registrar's office which are obtained by the solicitor upon payment of 1*d*. a

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folio, are allowed him at 4*d.* per folio, including therein the payment and the attendance for the print.

105. And for examining the proof print, at per folio 0 0 2 0 0 2

106. And for printing the amount actually and properly paid to the printer, not exceeding per folio 0 1 0 0 1 0

Amount paid printer—credit.—A solicitor must give credit as between himself and his client for the whole amount payable by any other party for printed copies (O. 66, r. 7 (d)).

107. And in addition for every 20 beyond the first 20 copies, at per folio . . 0 0 1 0 0 1

108. And where any part shall properly be printed in a foreign language, or as a fac-simile, or in any unusual or special manner, or where any alteration in the document being printed becomes necessary after the first proof, such further allowance shall be made as the taxing officer shall think reasonable.

Fac-simile copies.—The usual allowance for fac-simile copies is 6*d.* a folio.

109. These allowances are to include all attendances on the printer.

"**Attendances on the printer.**"—These may be allowed, in the taxing officer's discretion, where documents are printed otherwise than pursuant to Rules of Court, *e.g.* conditions of sale, advertisements.

110. The solicitor for a party entitled to take printed copies shall be allowed, for such number of copies as he shall necessarily or properly take, the amount he shall pay therefor.

"**Number of Copies.**"—By O. 66, r. 7 (c), the party printing shall on demand furnish to any other party any number of printed copies not exceeding ten.

Payment for copies.—The rate of payment is regulated by O. 66, r. 7 (c), and is 1*d.* per folio for the first copy and ½*d.* per folio for each subsequent copy.

Notice demanding Copies—is not allowed as a necessary or proper notice in the C. D. See Fee 53, *ante*, (n.) "Demands Generally."

111. In addition to the allowances for printing and taking printed copies, there shall be allowed for such printed copies as may be necessary or proper for the following but for no other purposes (*videlicet*).

"**But for no other purposes.**"—Prior to the J. A. 1873, and R. S. C. (Costs) Aug. 12, 1875, no profit costs were allowed the solicitor for printed copies; there cannot be allowed therefore any charge for printed copies of bills of complaint, answers, or evidence filed before the Act came into operation; neither under the above allowance (Fee 111) can there be allowed to the solicitor any profit costs for (1) printed copies mentioned in these fees used for purposes other than those set forth in this App., or (2) for printed copies *not* mentioned in these fees.

112. Of any pleading for delivery to the opposite party, or filing in default of appearance.

113. Of any special case for filing.

114. Of any petition of right for presentation, if presented in print, and for the solicitor of the Treasury, and service on any party.

115. Of any pleading, special case, or petition of right, for the use of the court or judge.

116. Of any affidavit to be sworn to in print.

117. And of any pleading, special case, petition of right, or evidence for the use of counsel in court, and in country agency causes when proper to be sent as a close copy for the use of the country solicitor, at per folio 0 0 2 0 0 3

Interlocutory Applications.—Copies of pleadings for the use of counsel and the court used not to be allowed on interlocutory applications, but they are now proper to be allowed, if necessary, see *Warner* v. *Mosses*, 19 C. D. 72.

118. Such additional allowances for printed copies for the court or judge, and for counsel, are not to be made where written copies have been made previously to printing, and are not in any case to be made more than once in the progress of the cause.

119. Close copies, whether printed or written, are not to be allowed as of course, but the allowance is to depend on the propriety of making or sending the copies, which in each case is to be shown and considered by the taxing officer.

Close copies: Agency cases.—In agency cases (see *Re Borough Commercial, &c. Society, infra*) it is usual to allow close copies of the following documents to the solicitor who is served with, or to whom are delivered, copies of such documents:—Special affidavits (as to what is a special affidavit, see Fee 74, *ante*, (n.) "Special Affidavits"); exhibits to affidavits; pleadings; originating summonses (but see *infra*, (n.) "Originating Summons"); originating petitions (but see *infra*, (n.) "Originating Petition"); notices to produce and admit; some special notices, *e.g.*, a special notice of motion; special case; petition of right; proposed minutes of order. But the solicitor who charges for drawing a pleading or other document cannot charge for a close copy of that document.

Letters.—Close copies are allowed as between solicitor and client in the taxing officer's discretion, and in some cases as between party and party, *e.g.*, where the letters relate to a compromise which is successfully completed.

Summons in an action.—Close copies are not generally allowed.

Notices.—Close copies are not allowed except in the case of notices to produce and admit, and some special notices, *e.g.*, a special notice of motion.

Originating Summonses.—It would seem proper to allow a close copy of an originating summons to the solicitor entitled to peruse it, as a fee for perusal of an originating summons is allowed by Fee 122.

Petition, originating.—It would seem proper for a similar reason to allow a close copy of an originating petition.

Proper and Agency Cases. — *Registrars' Orders.*—Close copies are

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allowed at 4*d.* a folio to all solicitors attending settling whether they are properly concerned or as agents.

Masters' Orders and Certificates.—In addition to the payment for the copy which may be charged at 4*d.* a folio, a close copy at the same rate is allowed to all solicitors allowed to attend settling, whether they are properly concerned or as agents.

Common Partner in London and Country Firms.—In the C. D. agency charges are not allowed in such a case (*Re Borough, Commercial, &c. Society*, (1894) 1 Ch. 289).

120. Inserting amendments in a printed copy of any pleading, special case, or petition of right, when not reprinted . .	0	1	0	0	5	0
121. Or per folio	0	0	4	0	0	4

"*Any pleading*," *&c.*—This fee applies only to the amendments in writing of printed copies which the solicitor is entitled to charge for under Fees 110—119.

Perusals.

PERUSALS.

Increase of fees for perusal.—No discretion is given to the taxing officer by the R. S. C. to increase the fees for perusals.

Same solicitor for both parties.—The fees for perusals are not to apply in this case (O. 65, r. 27 (7)).

Co-defendant's pleadings.—The general rule is that the perusal of a co-defendant's pleadings cannot be allowed except where notice to read has been given to or by the party perusing, or such pleadings are included in the notices to produce or admit (cf. *Gt. E. Rly.* v. *Norwich, &c., Rly.*, W. N. (81) 92). On an originating summons and other proceedings in the C. D., where there is a conflict between the defendants, the perusal of co-defendant's evidence would seem to be proper to be allowed.

Accounts.—Perusal of accounts is allowed, as between party and party, where the account is exhibited to an affidavit, and is an account to be taken in chambers. The fee is 4*d.* a folio. See Fee 136, *infra*, (n.) "Perusing exhibits."

Surcharges for Judge's Chambers.—Perusal is usually allowed at 6*s.* 8*d.*, or at 4*d.* per folio.

Minutes of Order.—Perusal of the minutes of order proposed by the other side is allowed at 6*s.* 8*d.* or 4*d.* a folio.

Depositions taken abroad.—See O. 65, r. 27 (9), (n.) "Examination abroad."

122. Of statement of claim, defence, reply, joinder of issue, and other pleading (not being a petition in a pending cause or matter, or summons other than an originating summons) by the solicitor of the party to whom the same are delivered	0	6	8	0	13	4

"*Other pleading.*"—As to what is included in the word "pleading" see Fee 72, *ante*, (n.) "Pleading."

123. Or per folio	0	0	4	0	0	4
124. Of amendment of any such pleading in writing	0	6	8	0	6	8
125. Or per folio	0	0	4	0	0	4
126. If same reprinted . . .	0	6	8	0	13	4

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
127. Or per folio of amendment . .	0	0	4	0	0	4
128. Of interrogatories to be answered by a party by his solicitor . . .	0	6	8	0	13	4
129. Or per folio	0	0	4	0	0	4
130. Of special case *or statement of facts* by the solicitor of any party except the one by whom it is prepared . .	0	6	8	0	13	4
The words in italics were added by R. S. C. 25 Feb. 1895.						
131. Or per folio	0	0	4	0	0	4
132. Of copy order to add parties, notice of defendant's claim against any person not a party to the action under O. 16, r. 49, and of defendant's defence and counterclaim served on a person not a party under O. 21, r. 13, by the solicitor of the party served therewith, and in these several cases the perusal of the plaintiff's statement of claim is also to be allowed unless the solicitor has been previously allowed such perusal . . .	0	6	8	0	13	4
133. Or per folio	0	0	4	0	0	4
134. Of notice to produce on trial or hearing of action, and notice to admit by the solicitor of the party served . .	0	6	8	0	13	4
Increase of this Fee.—There is no authority to increase this fee, whatever may be the length of the notice.						
135. Or if to admit facts under O. 32, r. 4, per folio	0	1	0	0	1	0
136. Of affidavit in answer to interrogatories by the solicitor of the party interrogating, and of other special affidavits by the solicitor of the party against whom the same can be read, per folio .	0	0	4	0	0	4

"Per folio of amendment."—This would seem to mean per folio of the whole pleading as reprinted.

"Special Affidavits."—All affidavits, except affidavits of service, are usually considered to be special affidavits.

Perusing exhibits.—The perusal of accounts to be taken in chambers and exhibited to affidavits is allowed in the C. D. between party and party. A special order for the allowance of costs of perusals of exhibits was made in *Re De Rosaz*, 24 C. D. 684, cited under O. 65, r. 27 (7).

136A. Of a petition in a pending cause or matter by the solicitor of the party to whom the same is delivered, such sum (if any) as the Taxing-Master may in his discretion think reasonable (added by R. S. C., August, 1899).

App. N. Attendances.

Attendances.

ATTENDANCES.

Central Office.—In addition to those given in this Appendix, the following allowances are made in respect of attendances at the central office :—

	s.	d.
Searching for appearance (both in C. D. and Q. B. D.)	3	4
Searching appearance and for certificate of non-appearance	6	8
Searching for affidavits (in Q. B. D. only, and in some cases only)	3	4

In the Sched. Fees, Hil. T. 1853 (C. L. P. Act, 1852), the allowance for all common searches was 3*s.* 4*d.*

	s.	d.
Filing affidavits (in Q. B. D. only and in some cases only, see Sched. Fees, Hil. T. 1853)	3	4
Obtaining office copies (in Q. B. D. only and in some cases only, see Sch. Fees, Hil. T. 1853)	3	4
Amending writ of summons or originating summons	6	8
Obtaining certificate of memorandum of service	6	8
Lodging securities in court	13	4
Receiving mortgage money	13	4
Entering order amending record by striking out or adding parties or consolidating actions	6	8

No allowance is made for attendances at the central office to file pleadings (O. 41, r. 5), or admissions or petitions (O. 61, r. 15) before passing an order; or (in the C. D.), for attendances to file or search for affidavits.

Searches in Record Office, &c.

Record Office.—Searches are allowed in detail as between solicitor and client; as between party and party they are usually included in the allowances for instructions.

Somerset House.—Attendances searching wills, &c., are allowed in detail according to the time occupied as between solicitor and client, and as between party and party against a common fund. As against a paying party they are usually included in the allowance for instructions.

Certificates of Birth, &c.—Searches for, and letters with reference to, certificates to prove pedigrees are allowed in detail both as between solicitor and client and as between party and party.

Paymaster-General.—The following allowances are made in the C. D. in respect of attendances, &c., at the Paymaster-General's office. Some of the allowances here set forth are taken from the 2nd Schedule of Fees to the Chancery Consolidated Orders (1860), which remain in force by virtue of O. 65, r. 27 (37) (see (n.) "Old Allowances," at the head of this Appendix); and these are marked "Chcy. C. O." The allowances not so marked are either old allowances or have been adopted to meet changes in practice and procedure.

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
Bespeaking cheques—						
Attending to bespeak cheques for creditors	0	6	8	0	13	4
Attending to identify—						
Attending to identify a person receiving a cheque (Chcy. C. O.)	0	6	8	0	6	8
Payment into Court—						
Attending obtaining directions to pay into Court and attending at the Bank of England paying in and for obtaining office copy receipt (Chcy. C. O.)	0	13	4	0	13	4

Where the sum paid in shall amount to £100 (Chcy. C. O.)	1	1	0	1	1	0
Where the same shall amount to £1,000 (Chcy. C. O.)		—		2	2	0
Where the same shall amount to £5,000 (Chcy. C. O.)		—		3	3	0

In the Chcy. C. O. the last two fees were Higher Scale fees only, but they are now usually allowed in all proceedings whether Higher or Lower Scale.

	s.	*d.*	*s.*	*d.*
Certificate of Fund—				
Attending to procure certificate of fund (Chcy. C. O.)	6	8	6	8
Attending to get the same re-dated	6	8	6	8
Transcript—				
Attending to procure transcripts of account when necessary (Chcy. C. O.)	6	8	6	8
Sale or transfer—				
Request for sale or transfer of stock	2	6	2	6
Attending bespeaking sale or transfer of stock	6	8	6	8

The allowance in the Chcy. C. O. was for "attendance on the registrar for directions to sell or transfer stock, 6*s.* 8*d.*," and "for attendance thereon, 6*s.* 8*d.*," and these fees were allowed for each sale or transfer, whether effected at the same time or not. The request to the paymaster now takes the place of the attendance for directions, and is allowed at 2*s.* 6*d.*, the fee allowed in the Chcy. C. O. for requests to invest and carry over, see *infra*.

Power of attorney—				
Attending Paymaster-General bespeaking power of attorney to receive money out of Court	6	8	6	8

It is usual to allow this attendance where charges in respect of the power of attorney are allowable, and also necessary letters and attendances procuring execution thereof.

Attending lodging power and afterwards to receive the money	6	8	6	8
Letter remitting same	3	6	3	6

Where applicable, the proper costs of a Request to remit by post take the place of a Power of Attorney. A Power of Attorney or a Request to remit by post is not allowed to one beneficiary only as against a common fund, but will be allowed if required by all beneficiaries alike.

Certificate of calculations.—It is usual to allow a *quantum meruit* for preparing a certificate for the Paymaster-General of calculations of any residue or aliquot part of money or securities dealt with by any order, when necessary (see S. C. F. R. 1894, r. 94).

Periodical payments.—The proper costs are also allowed for satisfying the Paymaster of the life of a person entitled to periodical payments from the pay office, or of the fulfilment of any conditions affecting such payments (see S. C. F. R. 1894, r. 95).

Payment out of money paid to Security of Costs account.—The usual allowance for attending to obtain a certificate from the chief clerk or taxing master for payment out of money paid in to security of costs account and attending to receive the money out is 13*s.* 4*d.*

Payment out of Court in Q. B. D.—

Attendance to receive money out of Court (see Sched. Fees, Hil. T. 1853)	10 0

Other Allowances.—For other allowances in respect of attendances at the Paymaster-General's office, see Scott's Guide to Costs: I. In the C. D.: as to allowances on receiving money out of Court pursuant to

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S. C. F. R. 1894, r. 48 (p. 304); as to charges for powers of attorney (p. 304); as to payment or transfer into Court under the Trustee Relief Act (p. 356); proceedings in Paymaster's office generally (p. 370). II. In the Q. B. D.: as to allowances on paying money into Court before defence (*ibid.* p. 404); as to acceptance of money out of Court (p. 404).

Lis pendens.—Attending to register 6*s.* 8*d.*, and drawing minute or memorandum and copy, 5*s.* Both charges are allowed only as between solicitor and client.

Stamping Deeds.—The usual allowance in respect of attendances for stamping documents is, in the case of letters or other documents stamped with an impressed stamp of 6*d.* as evidence of a contract, 3*s.* 4*d.*; in the case of deeds endorsed on deeds, 6*s.* 8*d.*; in the case of deeds and other documents stamped with an *ad valorem* stamp, where the stamp does not exceed £1, 3*s.* 4*d.*; where it exceeds £1 but does not exceed £20, 6*s.* 8*d.*; where it exceeds £20, 13*s.* 4*d.*

Settlement of Action.—An attendance upon the proper officer to notify the settlement of a cause is allowed at 3*s.* 4*d.*, provided the notification be given before the cause has appeared in the week's list. (Resolution of Judges of Q. B. D., 24 May, 1894, see 38 Sol. Jo. 528.)

	Lower Scale. £	*s.*	*d.*	Higher Scale. £	*s.*	*d.*
137. To obtain consent of next friend to sue in his name, or of a guardian *ad litem*.	0	6	8	0	13	4

"**Consent.**"—The usual allowance for drawing and fair copy consent is 5*s.*

138. To deliver or file in lieu of delivery, any pleading (not being a petition or summons) and a special case . .	0	3	4	0	6	8

"**Not being a petition or summons.**"—The allowances for serving, or filing in lieu of serving, a petition or summons are Fees 28—34.

Same solicitor for both parties.—The fees for delivery of pleadings are not to apply where the same solicitor is for both parties unless it be necessary for the purpose of making an affidavit of service (O. 65, r. 27 (6)). And see also O. 65, r. 27 (8), as to where the same solicitor is concerned for two or more defendants and separate pleadings are delivered.

139. To inspect, or produce for inspection, documents pursuant to a notice to admit	0	6	8	0	13	4
140. Or per hour	0	6	8	0	6	8
141. To examine and sign admissions .	0	6	8	0	13	4

Admissions.—If the signature to the admissions is on a copy of the notice to admit, a fair copy of such notice for signature at 4*d.* per folio may be allowed; if admissions are drawn, then drawing admissions 1*s.* per folio, and a copy for signature at 4*d.* per folio may be allowed.

142. To inspect, or produce for inspection, documents referred to in any pleading, notice in lieu of pleading, or affidavit, pursuant to notice under O. 31, r. 14 .	0	6	8	0	6	8

143. Or per hour 0 6 8 0 6 8

"**Under O. 31, r. 14.**"—This is a mistake for O. 31, r. 15. Rule 14 relates to the production of documents by order.

Inspection of documents referred to in an affidavit or pleading.—Good and sufficient reason must be shewn for allowing this inspection (O. 65, r. 27 (17)).

Inspection of documents under an order for affidavit of documents.—No costs of such inspection can be allowed as between party and party in the C. D., either to the party producing or the party inspecting. This disallowance includes the costs of payments for copies of documents inspected (*Brown* v. *Sewell*, 16 C. D. 517). In the Q. B. D. such costs are usually provided for by the order.

Inspection under Bankers' Books Evidence Act.—By s. 8 of the Bankers' Books Evidence Act, 1879, 42 & 43 Vict. c. 11, these costs are in the discretion of the court.

144. To obtain or give any necessary or proper consent 0 6 8 0 6 8

Extensions of time—Consents.—The costs of applications for extension of time are, in the absence of an order disposing of such costs, in the discretion of the taxing officer, who is not to allow more than one extension unless satisfied that the further extension was necessary (O. 65, r. 27 (24)), and see that rule as to costs of a summons for time.

Trustee's consent to act: Solicitor's certificate.—This fee (144) covers both the attendance of the solicitor obtaining the trustee's consent and the solicitor's certificate attesting the signature of the trustee under O. 38, r. 19A. Only one fee of 6*s.* 8*d.* is allowed for the attendance and the certificate. The allowance for drawing consent and copy is usually 5*s.* An affidavit verifying the trustee's signature will not be allowed (O. 38, r. 19A).

The certificate required should be prepared in blank before the consent is applied for, so that when the verbal consent is obtained the written consent may be signed. One attendance only is usually allowed.

145. To obtain an appointment to examine witnesses 0 6 8 0 6 8

146. On examination of witnesses before any examiner, commissioner, officer, or other person 0 13 4 0 13 4

147. Or according to circumstances, not to exceed 2 2 0 2 2 0

148. Or if without counsel, not to exceed 3 3 0 3 3 0

Examiner's Fees.—See (nn.) to O. 37, r. 51.

149. On deponents being sworn, or by a solicitor or his clerk to be sworn, to an affidavit in answer to interrogatories or other special affidavit 0 6 8 0 6 8

Increase of this Fee: discretion of taxing officer.—See (n.) "Increase of Allowances," &c., at the head of this Appendix. Where more than one deponent to the same affidavit is sworn at the same time, only one fee of 6*s.* 8*d.* is usually allowed.

App. N. Nos. 149–153. Attendances.

Journey to get Affidavit sworn, or employment of Agent.—Where necessary such reasonable allowance may be made as taxing officer may think fit (O. 65, r. 27 (4)); and the reasonable expenses of the deponent may be allowed in addition.

Attendances to settle and read over.—This fee (149) together with the fees for instructions and drawing cover all attendances on the deponent to settle and read over (O. 65, r. 27 (5)).

150. On a summons at judges' chambers	0	6	8	0	6	8
151. Or according to circumstances not to exceed	1	1	0	1	1	0

152. In the Chancery Division, all allowances for attending at the judges' chambers are to be by the judge or master as heretofore.

Increase of these Fees.—The judge (master) has power to increase these fees to £2 2*s.* (L. S.) and £3 3*s.* (H. S.), or in proceedings to wind up a company to £5 5*s.*; or in either case on a memorandum signed by the judge to £10 10*s.* (O. 65, r. 27 (12)).

Certificate of Attendances.—The certificate of attendances in chambers should be obtained from the master and left with the proper taxing-master with the copy order for taxation. There is no allowance for preparing such certificate or for attendances at chambers in respect of it.

Double set of Attendances.—In *Brown* v. *Gellatly*, 16 L. T. 553, where a solicitor acted for different parties in different interests, Lord Romilly decided that the costs of only one set of attendances in chambers could be allowed. This was a case of one solicitor acting for two sets of defendants, namely, one executor defendant and defendants remaindermen. (See report of case, 15 W. R. 887, and compare report of same case, 15 W. R. p. 1189.)

Counsel's attendance in Chambers.—No fees to counsel for attendance in chambers, or the consequent allowances for attendances on counsel and briefs and papers, are allowed on taxation unless the judge certifies for counsel (O. 65, r. 27 (16)). In the C. D. this certificate is given on the master's certificate of attendances. O. 55, r. 1A, which provides that in any proceeding before the judge in chambers, any party may, if he so desire, be represented by counsel, does not affect the rule laid down by O. 65, r. 27 (16), so far as taxation is concerned. This is usually held in the C. D. to be the rule as well between solicitor and client as between party and party. There is a decision to this effect in the Q. B. D. (*Re Chapman*, 10 Q. B. D. 54).

153. To file masters' and taxing masters' certificates, and get copy marked as an office copy	0	6	8	0	6	8

Master's certificate.—The other charges allowed in respect of such certificate are: drawing the body of the certificate or schedules (if drawn by the solicitor) (fee 100); paid for copy draft certificate, close copy (both in proper and agency cases), engrossing certificate, copy for office copy, all at 4*d.* per folio; paid office copy at 2*d.* per folio; paid stamp and *ad valorem* (as paid).

Taxing master's certificate.—The other charges allowed in respect of such certificate in the C. D. are: Transcribing certificate, 2*s.* 6*d.*; copy for office copy and paid, 2*s.* 6*d.*, making, with the above attendance and the payment of 10*s.* for the impressed stamp, a total of 21*s.* 8*d.*, or in the case of certificates where the costs are payable out of a fund in court and where no stamp is impressed, 11*s.* 8*d.* In the Q. B. D. there is no charge allowed in respect of the taxing-master's certificate.

App. N. Nos. 154–161 Attendances.

154. On counsel with brief or other papers—						
155. If counsel's fee one guinea . .	0	3	4	0	6	8
156. If more and under five guineas .	0	6	8	0	6	8
157. If five guineas and under 20 guineas	0	6	8	0	13	4
158. If 20 guineas	0	13	4	1	1	0
159. If 40 guineas or more . . .		—		2	2	0
160. On consultation or conference with counsel	0	13	4	0	13	4

Counsel's clerks.—The following fees are allowed to counsel's clerks, by O. 65, r. 27 (51) :—

	£	*s.*	*d.*
Upon a fee under 5 guineas	0	2	6
5 guineas and under 10 guineas	0	5	0
10 guineas and under 20 guineas . . .	0	10	0
20 guineas and under 30 guineas	0	15	0
30 guineas and under 50 guineas . . .	1	0	0
50 guineas and upwards per cent. . . .	2	10	0
On consultations, senior's clerk . . .	0	5	0
On consultations, junior's clerk	0	2	6
On conferences	0	5	0
On retainers (where allowed) :			
General retainer	0	10	6
Common retainer	0	2	6

Vouchers for counsel's fees.—No vouchers are accepted on taxation without counsel's signature. In the case of Queen's counsel initials only are sufficient (O. 65, r. 27 (51), and (nn.)).

Retainer.—No retaining fee may be allowed as between party and party (O. 65, r. 27 (44)). It is in the discretion of the taxing officer to allow a fee between solicitor and client, in which case 3*s.* 4*d.* is allowed for attending to pay the fee.

Allowances to counsel generally.—See O. 65, r. 27 (4), and (nn.) thereto.

Conferences.—No fees are allowed for conferences in addition to the counsel's fees for drawing and settling or perusing any pleadings, affidavits, deeds, or other proceedings, or abstracts of title, or for advising thereon, unless the taxing officer thinks for some special reason the conference was necessary and proper (O. 65, r. 27 (45)).

One Counsel. County Court Costs.—One counsel only is to be allowed in cases within O. 65, r. 12, that is, in actions where the plaintiff recovers not more than £50 exclusive of costs, without special reasons (O. 65, r. 27 (46)).

Two Counsel.—Both may be chosen from the outer bar (O. 65, r. 27 (47)). For cases as to the allowance of two counsel, see O. 65, r. 27 (47), (n.) "Two Counsel," &c.

Three Counsel.—See O. 65, r. 27 (47), (n.) "More than two Counsel."

Daily Refreshers.—See O. 65, r. 27 (48), and (nn.) thereto.

Term Refreshers.—See this (n.), Fee 201, *post.*

Brief to hear Judgment.—See this (n.), Fee 96, *ante.*

Premature delivery of briefs.—The costs of briefs are not to be allowed if prematurely delivered (O. 65, r. 27 (49), and r. 27 (30), (n.) "Incomplete Affidavits"). A brief on the trial of an action in the C. D. is usually considered to be prematurely delivered if delivered when the action is more than twelve out of the daily list.

161. To enter or set down action, special case, or appeal, for hearing or trial	0	6	8	0	6	8

App. N. Nos. 161–167. Attendances.

"**For hearing.**"—This fee would seem to apply to any entering or setting down where the Court fee of £2 (No. 52) is payable, and to a hearing on further consideration whether on summons adjourned or otherwise where the fee of £2 is not payable; but it does not apply to a summons adjourned into Court.

	L. S.			H. S.		
	£	s.	d.	£	s.	d.
162. In court on motion of course and on counsel and for order . . .	0	10	0	0	13	4

"**Motion of Course.**"—As to what motions are motions of course see D. C. P. 1546, 1547, and cf. definition of an order of course after Fee 195, *post*.

163. To present petition for order of course and for order	0	10	0	0	13	4

"**Orders of Course.**"—For definition see note after Fee 195. Attendances to settle and pass orders of course are not allowed.

Registrar's Orders. *Settling, &c.*—The following allowances in the Chcy. C. O. (2nd Sched. Fees) are still in force, as no new allowances have been introduced by this Appendix (cf. (n.) "Old Allowances" at the beginning of this Appendix), namely :—

	L. S.			H. S.		
	£	s.	d.	£	s.	d.
For the plaintiff or party having the conduct of the order, attending the Registrar with brief and papers to bespeak minutes of order, not being an order of course	0	6	8	0	6	8
Attending to settle the draft or minutes of any decree or order . . .	0	6	8	0	13	4
Or at the taxing master's discretion not to exceed	1	1	0	3	3	0
Attending to pass any decree or order not being an order of course, including the entry thereof . . .	0	6	8	0	13	4

A close copy is also allowed both in agency and proper bills at 4*d*. per folio.

The brief referred to in the first of these allowances was a court brief, and therefore the fee for attending the registrar to bespeak order applies only to orders made in Court.

Notices to settle and pass were also allowed the solicitor having the conduct of the order by the Chcy. C. O. at 2*s*. 6*d*. each, but the allowance is now governed by Fees 51 and 33, *ante*.

In addition the taxing master allows to the solicitor having the carriage of a printed order 6*s*. 8*d*. for examining the white print.

Attending the Registrar to procure a necessary and proper alteration in an order drawn up and to enter is allowed in the Master's discretion.

Special allowance.—The taxing master has discretion under O. 65, r. 27 (11), to give an increased allowance if the registrar certifies for a special allowance under O. 62, r. 15.

164. In court on every special motion, each day	0	6	8	0	13	4
165. On same when heard each day .	0	13	4	0	13	4
166. Or according to circumstances not to exceed	2	2	0	2	2	0

"**Special motion.**"—That is, any motion, whether *ex parte* or not, other than a motion of course (D. C. P. 1547).

167. On special case, or special petition, or application adjourned from the judges' chambers, when in the special paper for the day, or likely to be heard . . .	0	6	8	0	10	0

App. N. Nos. 168–180. Attendances.

168. On same when heard . . .	0	13	4	1	1	0
169. Or according to circumstances, not to exceed	2	2	0	2	2	0

Originating Summons adjourned into Court.— This comes under these fees, and not under Fees 170—172

170. On hearing or trial of any cause, or matter, or issue of fact, in London or Middlesex, or the town where the solicitor resides or carries on business, whether before a judge with or without a jury, or commissioner, or referee, or on assessment of damages, when in the paper . .	0	10	0	0	10	0
171. When heard or tried . . .	0	13	4	1	1	0
172. Or according to circumstances, not to exceed	3	3	0	3	3	0
173. When not in London or Middlesex, nor in the town where the solicitor resides or carries on business, for each day (except Sundays) he is necessarily absent	3	3	0	3	3	0
174. And expenses (besides actual reasonable travelling expenses) each day, including Sundays	1	1	0	1	1	0
175. Or if the solicitor has to attend on more than one trial or assessment at the same time and place, in each case . .	1	1	0	1	11	6
176. The expenses in such case to be rateably divided.						

Country Solicitor's journeys to town.—See O. 65, r. 27 (10) and (nn.), *The Soto*, (1893) P. 75, *Re Dixon*, (1898) 2 Ch. 443. In conveyancing business the allowance is 5 guineas a day of 7 hours, or 15*s.* an hour, but this is subject to the taxing-master's discretion (Sol. Rem. Act, 1881, Gen. Order, Sched. II.).

177. To hear judgment when same adjourned	0	6	8	0	13	4
178. Or according to circumstances .	0	13	4	1	1	0

Brief to hear judgment.—See this (n.) to Fee 96.

179. To deliver papers (when required) for the use of a judge prior to a hearing .	0	6	8	0	6	8
180. If more than one judge . .	0	13	4	0	13	4

"When required."—This allowance applies to the delivery to the judge's clerk of papers other than the two copies of the whole of the pleadings which are required to be delivered to the proper officer (the registrar) on entering an action for trial. One of these copies of the pleadings is for the use of the judge (O. 86, r. 30, and (nn.)). Fee 161 covers such delivery of the pleadings to the registrar.

Copies for the Judge.—See this (n.) Fee 103, *ante*.

Special case.—By O. 34, r. 3, three printed copies for the use of the judge have to be left with the special case filed by the plaintiff.

Appeal: Papers for the Judges.—These fees (179, 180) apply to the

App. N. Nos. 180–191. Attendances.

delivery of papers on an appeal. See O. 58, r. 8, (n.) "Papers for the Judges."

Master: Papers for.—No fee for attending a master with papers is allowed except it is certified in the certificate of attendances.

181. On taxation of a bill of costs . .	0	6	8	0	6	8
182. Or according to circumstances, not to exceed.	2	2	0	2	2	0
183. Unless the same shall necessarily occupy so much time that the taxing officer shall consider such amount inadequate, in which case he may allow such further fee as he shall think proper.						
184. In actions and matters for purposes within the cognizance of the Court of Chancery before the Principal Act came into operation, such further fee as the taxing officer may think fit, not exceeding the allowances heretofore made.						

"*Allowances heretofore made.*"—The old scale in the C. D. was 6*s.* 8*d.* for every twenty-five folios of the bill of costs, and this scale is, if the taxing officer thinks fit, applicable by virtue of Fee 184 to actions and matters in such fee referred to.

185. To obtain or give an undertaking to appear	0	6	8	0	6	8

Letter asking for undertaking.—A letter asking a solicitor if he will give an undertaking to appear for a party is not allowed as between party and party.

Copy writ of summons, originating summons, or petition for service.—Where a solicitor gives an undertaking to appear, it would seem that he is only entitled to receive one copy of the writ, &c., and that the plaintiff's solicitor cannot charge more than one copy to deliver to the solicitor undertaking to appear, irrespective of the number of defendants represented; unless such copies are properly made prior to the undertaking to appear being obtained.

186. To present a special petition, and for same answered	0	6	8	0	6	8
187. On printer to insert advertisement in Gazette	0	6	8	0	6	8
188. On printer to insert same in other papers, each printer		—		0	6	8
189. Or every two	0	6	8		—	
190. On registrar to certify that a cause set down is settled, or for any reason not to come into the paper for hearing .	0	6	8	0	6	8
191. For an order drawn up by master, and to get same entered	0	6	8	0	6	8

Application of fee.—The fees allowed by the C. O. for drawing up orders before the registrar do not apply to orders in chambers; and therefore this fee covers all attendances before the master, for drawing up, settling and passing any order made in chambers (except in proceedings to wind up a company, see Fee 194), unless allowances in substitution for this fee are certified for in the master's certificate of attendances for settling or passing the order.

By a resolution passed at a meeting of chief clerks (now masters) on the 11th January, 1890, it was resolved that "orders made in chambers of the class to be drawn up in chambers ought to be drawn up by the junior clerk without minutes or notice to settle or pass, unless the order be so special as to warrant the presence of the parties."

Orders in proceedings to wind up companies.—Fee 194 applies.

192. On counsel to procure certificate that cause proper to be heard as a short cause, and on registrar to mark same . 0 6 8 0 6 8

Obtaining solicitor's consent to cause being heard short.—A fee of 6*s.* 8*d.* for the attendance on the solicitor is allowed in addition to this fee.

193. To mark conveyancing counsel or taxing master 0 6 8 0 6 8

"**Conveyancing counsel.**"—The fees to the conveyancing counsel are in the discretion of the taxing officer, subject to an appeal to the court or judge (O. 65, r. 27 (36), and see O. 65, r. 22, as to costs of other counsel in addition). See further O. 65, r. 27 (36), (nn.).

"**Taxing master.**"—This fee only applies to obtaining the reference to the taxing master in the first instance. No fee is allowed for attending a taxing master with an order where there has been a former reference to him, or in any case for attending to leave bills of costs or papers and vouchers with him. For other allowances in respect of taxation, see Fees 181—184 and (n.).

194. For preparing and drawing up an order made at chambers in proceedings to wind up a company and attending for same, and to get same entered . . 0 13 4 0 13 4

195. And for engrossing every such order, per folio 0 0 4 0 0 4

NOTE.—An order of course means an order made on an *ex parte* application, and to which a party is entitled as of right on his own statement and at his own risk.

196. To examine an abstract of title with deeds, per hour, in a cause or matter 0 10 0 0 10 0

197. To produce deed for such purpose, per hour 0 6 8 0 6 8

This fee would seem to conflict with the allowance of 10*s.* for an attendance provided by the General Order under the Sol. Rem. Act, 1881, Sched. II. (p. 595, *post*). See *Stanford* v. *Roberts*, 26 C. D. 155; *Walters* v. *Chinery*, 34 Sol. J. 284, and cf. sect. 7 of the Act.

Conveyancing—allowances for attendances in, &c.—See General Order under Sol. Rem. Act, Sch. II., and (nn.) thereto, p. 591, *post*; and see Scott's Guide to Costs, pp. 537—539, 565—568.

OATHS AND EXHIBITS.

198. Commissioners to take oaths or affidavits. For every oath, declaration, affirmation, or attestation upon honour in London or the country 0 1 6 0 1 6

App. N. Nos. 199-201.

199. The solicitor for preparing each exhibit in town or country 0 1 0 0 1 0

200. The commissioner for marking each exhibit 0 1 0 0 1 0

Special fees.—It is usual to allow special fees to a commissioner when he necessarily and properly has to take a journey from his office to swear a deponent.

Recognizance.—The court fee for taking a recognizance is 10*s.* (No. 129), and it is usual to allow the same fee to a solicitor on performing the like duty. The allowance in respect of preparing a recognizance is £1 15*s.* 0*d.* (higher scale £2 12*s.* 6*d.*), which covers instructions for drawing, engrossing, and attending settling. Parchment is chargeable in addition (Reg. Aug. 1857).

Married women's acknowledgments.—The fees allowed to commissioners for taking the acknowledgments of married women by the order as to Court Fees, December, 1882, under 3 & 4 W. 4, c. 74, are as follows:—

	£	*s.*	*d.*
To a perpetual commissioner for taking the acknowledgment of a married woman when not required to go farther than a mile from his residence	0	13	4
To a perpetual commissioner when required to go more than one mile, but not more than three miles, besides his reasonable travelling expenses	1	1	0
To a perpetual commissioner when the distance exceeds three miles, besides his reasonable travelling expenses	2	2	0
Where more than one married woman at the same time acknowledges the same deed respecting the same property these fees are to be taken for the first acknowledgment only, and the fees to be taken for the other acknowledgment or acknowledgments, how many soever the same may be, shall be one-half of the original fee, and so where the same married woman shall at the same time acknowledge more than one deed respecting the same property.			

Note.—Where the deed has to be taken by two commissioners the above charges apply to each of such commissioners.

See further as to married women's acknowledgments, Stringer's Oaths and Affirmations, pp. 62—67.

Term Fees.

TERM FEES.

	Lower Scale. £	*s.*	*d.*	Higher Scale. £	*s.*	*d.*
201. For every term commencing on the day the sittings in London and Middlesex of the High Court of Justice commence, and terminating on the day preceding the next such sittings, in which a proceeding in the cause or matter by or affecting the party, after appearance entered, shall take place	0	15	0	0	15	0

"After appearance entered."—The effect of these words, which were added by the R. S. C. 1883, is that the entry of appearance does not carry the term fee, but the old practice, which allowed term fees in proceedings commenced by petition and otherwise where no appearance is entered in the central office is not interfered with.

"By or affecting the party."—"Party shall include every person, served with notice of, or attending any proceeding, although not named on the record" (Jud. Act, 1873, s. 100). It would seem that term fees may therefore be allowed to plaintiffs and defendants and to parties who are served with notice of judgment or order, and who have entered an

appearance at the central office, but not to other persons, such as claimants and purchasers who are not served with such notice and do not enter any appearance on the record.

It has been decided that the following are proceedings which carry term fees: the laying before the taxing master a copy of the decree and of the bill for taxation (*Davies* v. *Marshall*, 1 Drew. & Sm. p. 567); a payment into court to a costs account (*Myers* v. *Isaacs*, W. N. (1889) 9); and, by old practice, the entry of the action for trial or hearing in the list of actions for trial in the term in which the entry is made and in every subsequent term until the trial takes place; an attendance in chambers certified for by the chief clerk; and an attendance before the registrar settling or passing an order. A consent which is given in lieu of a summons, *e.g.*, for extension of time; and an attendance between the parties to vouch accounts in lieu of an attendance in the chambers of the judge for the same purpose, are also proceedings which are sometimes considered to carry term fees. Term fees are not allowed as part of the costs of interlocutory proceeding, if there is any general proceeding in the action which will carry a term fee; but *quære* effect of decision in *Warner* v. *Mosses*, 19 C. D. 72.

Term refreshers.—Term refreshers as well as daily refreshers may both be allowed in the same term (*Levetus* v. *Newton*, 28 Sol. Jo. 166). By old practice in the C. D. they are confined to actions commenced by writ of summons.

202. And further, in country agency causes or matters, for letters . . . 0 6 0 0 6 0

203. Where no proceeding in the cause or matter is taken which carries a term fee, a charge for letters may be allowed, if the circumstances require it.

Agency correspondence.—By O. 65, r. 27 (10), the taxing officer has discretion to make a special allowance where the agency correspondence has been special and extensive. Correspondence with an agent other than the London agent is allowed where the profits are not shared by the two solicitors.

Common partner.—Where the country firm of solicitors and the London firm have a common partner, agency fees are not allowed (*Re Borough Commercial and Building Society*, (1894) 1 Ch. 289).

Solicitor out of the jurisdiction.—Where the London solicitor is agent for solicitors out of the jurisdiction, he is held to be concerned properly, but in such a case he will be allowed as between solicitor and client close copies and correspondence with his principal.

Agency.—A firm of solicitors with offices in London and the country cannot charge for the correspondence between the two offices (see *Re Harle*, 19 L. T. 305).

Letters.—*Letter before action.*—This is not allowed in the C. D. but is always allowed in the Q. B. D. See Sched. Fees, Hil. T. 1853.

Circular letters.—By the Sched. Fees, Hil. T. 1853, the allowance at common law for circular letters was 3*s.* 6*d.* for the first and 1*s.* 6*d.* for each letter after the first; and this is the usual allowance now in both divisions.

Letter with draft deed, &c.—A letter (3*s.* 6*d.*) is allowed as between party and party submitting for approval of other side, draft deed, statement of facts, admissions, or minutes.

App. N. Nos. 203, 204.

Letters to deponents.—Letters to deponents making appointments to depose to affidavits are not usually allowed.

Other letters.—The usual allowance in both divisions is 3*s.* 6*d.* for ordinary letters and 5*s.* for special letters.

204. In addition to the above an allowance is to be made for the necessary expense of postages, carriage and transmission of documents.

Allowances to Witnesses.

Allowances to Witnesses.—No table of allowances to witnesses either in the C. D. or Q. B. D. has been issued since the table (reprinted below) which is taken from the "Directions to the Masters" of Hil. Term, 1853, issued under the C. L. P. Act, 1852. This table is still to some extent a guide to allowances, though it is, in consequence of the 8th rule of special allowances of 1875 (now O. 65, r. 27 (9)), no longer binding either on the taxing masters of the Q. B. D. (*Turnbull* v. *Janson*, 3 C. P. D. 264; *Mackley* v. *Chillingworth*, 2 C. P. D. 273), or on the Chancery taxing masters (*East Stonehouse Local Board* v. *Victoria Brewery Co.*, (1895) 2 Ch. 514). In practice a somewhat more liberal scale of allowances is usually adopted in both divisions. See also O. 65, r. 27 (9), and cases there cited; and Morgan and Wurtzburg, pp. 44—46.

These allowances do not apply to judgment debtors ordered to attend and be examined under O. 42, r. 32 (*Rendell* v. *Grundy*, (1895) 1 Q. B. 16).

As to allowance to solicitors as witnesses, see (n.) Fee 176, *ante*.

ALLOWANCES TO WITNESSES.

	If resident in the town in which the cause is tried.	If resident at a distance from the place of trial.
	£ *s.* *d.*	£ *s.* *d.*
Common witnesses, such as labourers, journeymen, &c., per diem	0 5 0	0 5 0 to 0 7 6
Master tradesmen, yeomen, and farmers, per diem from	0 7 6 to 0 10 0	0 10 0 to 0 15 0
Auctioneers and accountants, per diem .	0 10 6 to 1 1 0	0 10 6 to 1 1 0
Professional men, per diem	1 1 0	—
Ditto, inclusive of all, except travelling expenses, per diem	—	2 2 0 to 3 3 0
Attorneys' or other clerks, per diem . .	0 10 6	0 15 0 to 1 1 0
Engineers and surveyors, per diem . .	1 1 0	1 1 0 to 3 3 0

ALLOWANCES TO WITNESSES—*continued*.

App. N. Allowances to Witnesses.

	If resident in the town in which the cause is tried.	If resident at a distance from the place of trial.
	£ s. d.	£ s. d.
Notaries, per diem	1 1 0	1 1 0
Gentlemen Esquires Bankers Merchants	1 1 0 with subpœna but no daily allowance except after the first day and then a reasonable sum for refreshment and conveyance.	1 1 0 per diem.
Females according to station in life, per diem from	0 5 0 to 0 10 0	0 5 0 to 1 0 0
Police inspector, per diem	0 5 0	0 7 6 to 0 10 0
Police constable	0 3 0	0 5 0 to 0 7 6

If the witnesses attend in one cause only they will be entitled to the full allowance. If they attend in more than one cause they will be entitled to a proportionate part in each cause only.

The travelling expenses of witnesses shall be allowed according to the sums, reasonable and actually paid, but in no case shall exceed 1*s*. per mile one way.

App. O.

APPENDIX O.

REPEALS.

(See O. 65, r. 27 (37), and O. 72, rr. 1, 2.)

(1.) The several Rules, Orders, and Forms contained in the Schedule and Appendix to the Supreme Court of Judicature Act (1873) Amendment Act (Jud. Act, 1875).

(2.) The additional Rules to the Judicature Act, 1875.

(3.) The Rules of the Supreme Court, December, 1875.

(4.) The Rules of the Supreme Court, February, 1876.

(5.) The Rules of the Supreme Court, June, 1876.

(6.) The Rules of the Supreme Court, December, 1876.

(7.) The Rules of the Supreme Court, May, 1877.

(8.) The Rules of the Supreme Court (Costs).

(9.) The Rules of the Supreme Court, June, 1877.

(10.) The Rules of the Supreme Court, November, 1878.

(11.) The Rules of the Supreme Court, March, 1879.

(12.) The Rules of the Supreme Court, December, 1879.

(13.) The Rules of the Supreme Court, April, 1880.

(14.) The Rules of the Supreme Court, May, 1880.

(15.) Rules of the Supreme Court, May, 1883.

(16.) The Regulæ Generales of Hilary Term, 1853, dated 11th January, 1853 (except the Rules as to juries).

(17.) Regulæ Generales, as to Pleading made by the Judges in pursuance of the Common Law Procedure Act, 1852, dated the 10th of May, 1853.

(18.) The Rules under the 6th section of the Debtors Act, 1869.

(19.) The Chancery Consolidated General Orders of 1860.

(20.) The Chancery Orders dated—

March 6th, 1860.	May 16th, 1862.
March 20th, 1860.	May 27th, 1865.
February 1st, 1861.	May 7th, 1866.
February 5th, 1861.	November 22nd, 1866.
July 13th, 1861.	April 17th, 1867.
January 1st, 1862.	

(21.) The Chancery Regulations dated August 8th, 1857, and March 15th, 1860.

(22.) The Rules, Orders, and Regulations for the High Court of Admiralty of England, 1859 and 1871. **App. O.**

(Signed) SELBORNE, C.
COLERIDGE, C. J.
W. B. BRETT, M. R.
JAMES HANNEN.
NATH. LINDLEY, L J.
EDW. FRY, L. J.
C. E. POLLOCK, P.
H. MANISTY, J.

HENRY COTTON, L. J.
(Signed in respect of Rules as to sittings of Court of Appeal.)

PART II.

ORDERS UNDER THE SUPREME COURT OF JUDICATURE ACT, 1875, AS TO COURT FEES AND STAMPS.

Order of 1884, rr. 1, 2.

ORDER AS TO SUPREME COURT FEES, 1884.

THE Right Honourable ROUNDELL, EARL OF SELBORNE, LORD HIGH CHANCELLOR OF GREAT BRITAIN, by and with the advice and consent of the undersigned judges of the Supreme Court, and with the concurrence of the Lords Commissioners of Her Majesty's Treasury, doth hereby in pursuance and execution of the powers given by the Supreme Court of Judicature Act, 1875, and all other powers and authorities enabling him in this behalf, order and direct in manner following :—

[This Order supersedes the Order as to Court Fees of 28th October, 1875.]

r. 1. Fees to be taken in Supreme Court.

1. The fees and percentages contained in the schedule hereto are fixed and appointed to be, and shall be taken in the High Court of Justice, and in the Court of Appeal, and in any court to be created by any commission, and in any office which is connected with any of those courts, or in which any business connected with any of those courts is conducted, and by any officer paid wholly or partly out of public moneys who is attached to any of those courts, or the Supreme Court or any judge of those courts, or any of them. And the said fees and percentages shall, until otherwise determined by the Treasury, be taken by stamps in the same manner as heretofore, except those taken in the District Registries, which shall, until otherwise determined by the Treasury, be taken as the fees and percentages are now taken.

Schedule of Fees.—The Schedules to the Orders as to Court Fees dated 28th October, 1875, and 6th August, 1880, contained two scales of fees, respectively adapted to the lower and higher scales of costs allowed to solicitors. The Schedule to this Order has only one scale of fees, most of which are the same as the fees on the higher scale in the Schedules to the previous Orders, though by the R. S. C., 1883, O. 65, rr. 8, 9, 10, the lower scale of solicitors' costs is made the general scale.

Stamps.—See the Treasury Order of 4th July, 1884, *post*.

r. 2. Saving clause as to certain existing fees.

2. The provisions in this Order shall not apply to or affect any of the matters following (that is to say) :—

The existing fees and percentages in respect of any of the jurisdictions which are not, by the Supreme Court of Judicature Acts, 1873 and 1875, transferred to the High Court of Justice or the Court of Appeal ;

The existing fees and percentages in respect of any matters within the jurisdiction of the Court of Probate at the time of the passing of the Supreme Court of Judicature Act, 1875, other than probate actions, or in respect of any appeal in bankruptcy;

The existing fees and percentages in respect of any criminal proceedings, other than such proceedings on the Crown side of the Queen's Bench Division as the scale contained in the schedule hereto may be applicable to;

The existing fees and percentages in respect of matters on the revenue side of the Queen's Bench Division, and proceedings and business in the office of the Queen's Remembrancer, other than such matters, proceedings, and business as the scale contained in the schedule hereto may be applicable to;

The existing fees and percentages authorised to be taken by any sheriff, under sheriff, deputy sheriff, bailiff, or other officer or minister of a sheriff;

The existing fees and percentages directed to be taken or paid by any Act of Parliament, and in respect of which no fee or percentage is hereby provided;

The existing fees and percentages which shall have become due or payable before this Order comes into operation.

r. 3. Abolition of existing fees and percentages.

3. Save as otherwise provided by this Order all existing fees and percentages which may be taken in any of the courts whose jurisdiction is, by the Judicature Acts, 1873 and 1875, transferred to the High Court of Justice or Court of Appeal, or in any office which is connected with any of those courts, or in which any business connected with any of those courts is conducted, or by any officer paid wholly or partly out of public moneys who is attached to any of those courts, or the Supreme Court, or any judge of those courts or any of them, shall be and are hereby abolished.

r. 4. Folio.

4. A folio is to comprise 72 words, every figure comprised in a column, or authorised to be used, being counted as one word.

r. 5. Interpretation.

5. The provisions of Order LXXI. of the Rules of the Supreme Court, 1883, shall apply to this Order.

R. S. C., 1883, O. 71, provides as to interpretation of terms.

r. 6. Commencement.

6. This Order shall come into operation on the 25th day of January, 1884, and may be cited as "The Order as to Supreme Court Fees, 1884."

THE SCHEDULE ABOVE REFERRED TO.

Schedule.

An Order or Rule herein referred to by number shall mean the Order or Rule so numbered in the Rules of the Supreme Court, 1883.

SUMMONSES, WRITS, NOTICES, COMMISSIONS, AND WARRANTS.

	£	s.	d.
1. On sealing a writ of summons for commencement of an action	0	10	0
2. On sealing a concurrent, renewed or amended writ of summons for commencement of an action	0	2	6

Schedule of Court Fees.

	£	s.	d.
3. On sealing a notice for service under Order XVI., rule 48	0	2	6
4. On sealing a writ of mandamus	1	0	0
5. On sealing a writ of subpœna for witnesses, not exceeding three persons	0	5	0
6. On sealing a writ of execution, a subpœna pursuant to the Court of Probate Act, 1858, section 23, and every other writ	0	5	0
7. On sealing or issuing an originating summons under the Act 6 & 7 Vict. c. 73, for the taxation of a solicitor's bill of costs within 12 months after delivery, or delivery of a bill of costs by a solicitor, including the order to be made thereon.	0	10	0
(*Note.—Compare fee No.* 65.)			
8. On sealing any other originating summons	0	10	0
9. On amending same	0	5	0
10. On sealing or issuing a summons for directions under Order XXX.	0	10	0
11. On sealing or issuing any other summons, or taxing-master's warrant	0	3	0
12. On filing a notice to have a reference to an Admiralty registrar placed in the list for hearing	0	10	0
13. On a notice in Admiralty actions pursuant to Order LXVII., rule 10	0	15	0
14. On sealing or issuing a commission to take oaths or affidavits in the Supreme Court	5	0	0
15. On every other commission	1	0	0
16. On marking a copy of a petition of right for service	0	5	0
APPEARANCES.			
17. On entering an appearance, for each person	0	2	0
18. On amending same	0	2	0
COPIES.			
19. On a copy of a written deposition of a witness to enable a party to print the same, for each folio	0	0	4
20. On examining a written or printed copy, and marking or sealing same as an office copy, for each folio	0	0	2
21. On making a copy and marking same as an office copy, for each folio	0	0	6
22. On a copy in a foreign language—the actual cost.			
23. On a copy of a plan, map, section, drawing, photograph, or diagram, the actual cost.			
24. On a printed copy of an order, not being an office or certified copy, for each folio	0	0	1
ATTENDANCES.			
25. On an application, with or without a subpœna, for any officer to attend as a witness, or to produce records or documents to be given in evidence (in addition to the reasonable expenses of the officer) for each day or part of a day he shall necessarily be absent from his office. The officer may require a deposit of stamps on account of any further fees, and a deposit of money on account of any further expenses which may probably become payable beyond the amount paid for fees and expenses on the application, and the officer or his clerk taking such deposit shall thereupon make a memorandum thereof on the application.	1	0	0

	£	s.	d.	Schedule of Court Fees.
The officer may also require an undertaking in writing to pay any further fees and expenses which may become payable beyond the amounts so paid and deposited.				
OATHS, &c.				
26. On taking an affidavit or an affirmation or attestation upon honour in lieu of an affidavit or a declaration, except for the purpose of receipt of dividends from the Paymaster-General, for each person making the same . .	0	1	6	
27. And in addition thereto for each exhibit therein referred to and required to be marked	0	1	0	
FILING.				
28. On filing a special case or petition of right . . .	1	0	0	
29. On filing, except in Admiralty actions, and unless otherwise provided, an affidavit, deposition, or set of depositions (including any exhibits annexed to any such affidavit or deposition), statement of claim in default of appearance, official and special referees' certificates, petition, preliminary act, submission to arbitration, award, warrant of attorney, cognovit, bail, satisfaction piece, bond, writ of execution with return, and power of attorney, and every other proceeding in a Probate action or in a Divorce or other Matrimonial cause or matter required by Act of Parliament, general order, or order in the action, cause or matter to be filed in the principal Probate Registry	0	2	6	
30. On filing a scheme pursuant to the Railway Companies Act, 1867, or the Liquidation Act, 1868	1	0	0	
31. On filing scrips in a Probate action or on depositing, pursuant to an order in any cause or matter, any documents for safe custody or production, if the number does not exceed five	0	5	0	
32. If exceeding five	0	10	0	
33. On a receipt for any document or documents to which the two last fees apply, when delivered out, or for any other document or documents when delivered out of the principal Probate Registry	0	2	6	
34. On filing an affidavit and notice under Order XLVI., rule 4	0	10	0	
35. On every minute in Admiralty actions pursuant to Order LXVI., rule 8, for every instrument or document to which the minute relates (other than an exhibit, or any instrument or document previously issued from the Registry or the Marshal's office) unless otherwise provided	0	5	0	
36. On filing a bill of sale and affidavit therewith where the consideration (including further advances) does not exceed 100*l.*	0	5	0	
37. Above 100*l.* and not exceeding 200*l.*	0	10	0	
38. Above 200*l.*	1	0	0	
39. On filing under the Bills of Sale Acts, 1878 and 1882, any other document to which the fees Nos. 36, 37, and 38 do not apply	0	10	0	
40. On filing an affidavit of re-registration of a bill of sale or any such other document as in No. 39 mentioned . .	0	10	0	
41. On filing a fiat of satisfaction	0	5	0	

Schedule of Court Fees.

CERTIFICATES.

	£	s.	d.
42. On a certificate of appearance, or of a pleading, affidavit, or proceeding having been entered, filed, or taken, or of the negative thereof, unless otherwise provided . . .	0	2	6
43. Or if required for use in a foreign country	0	5	0
44. Or if a certificate of proceedings pursuant to Order LXI., rule 24	0	5	0

SEARCHES AND INSPECTIONS.

45. On an application to search for an appearance or an affidavit, and inspecting the same	0	1	0
46. On an application to search an index, and inspect a pleading, judgment, decree, order, or other record, unless otherwise expressly provided for by any Act of Parliament or this Order, and to inspect scrips filed or documents deposited pursuant to an order for safe custody or production, for each hour or part of an hour occupied	0	2	6
47. Not exceeding on one day	0	10	0

EXAMINATION OF WITNESSES.

48. On every memorandum of appointment for an examination to be taken before an Examiner of the Court . . .	0	5	0
49. On every witness sworn and examined by an officer of the Court in his office, unless otherwise provided, including oath, for each hour or part of an hour	0	10	0
50. On an examination of witnesses by any such officer away from the office (in addition to reasonable travelling and other expenses), per day	3	0	0
51. The officer may require a deposit of stamps on account of fees and a deposit of money on account of expenses which may probably become payable beyond any amount paid for fees and expenses upon the examination, and the officer, or his clerk, taking such deposit shall thereupon make a memorandum thereof and deliver the same to the party making the deposit. The officer may also require an undertaking, in writing, to pay any further fees and expenses which may become payable beyond the amount so paid and deposited.			

[For the fees allowed to Examiners of the Court, see Vol. I., O. 37, r. 51 (n.).]

HEARING.

52. On entering or setting down, or re-entering or re-setting down an appeal to the Court of Appeal, or a cause or matter for trial or hearing in any Court in London or Middlesex or at any assizes, including hearing on further consideration where no such fee was paid on the original hearing, whether on summons adjourned from chambers or otherwise, and including special case, a petition in a Divorce or Matrimonial cause or matter by which a proceeding is commenced, and petition of right, but not			

Schedule of Court Fees.

	£	s.	d.
any other petition, nor any other summons adjourned from chambers. [See Order of Oct., 1884, *post.*] . .	2	0	0

[N.B.—This fee is payable though the matter for hearing does not arise in an action, as in the case of a rule *nisi* against a justice under 11 & 12 Vict. c. 44, s. 5 (*Ex p. Hasker*, 14 Q. B. D. 82). The fee is not payable on an appeal from Chambers (*Ex p. Dudley*, 33 W. R. 750).]

53. On entering directions of the judge at a trial pursuant to Order XXXVI., rules 41 and 42, and certifying same when required	1	0	0
54. On writing for the attendance of Trinity masters or other assessors on the hearing of an Admiralty action . .	0	10	0
55. On answering and setting down for hearing in court a petition by which any proceeding is commenced, unless otherwise provided	1	0	0
56. Any other petition	0	10	0

JUDGMENTS, DECREES AND ORDERS.

On drawing up and entering judgments, decrees, and orders—[See Order of Oct., 1884, *post.*]

57. If made in court on the original hearing or hearing on further consideration of a cause, or on the hearing of a special case or petition, or on any application to the Court of Appeal unless otherwise provided . . .	1	0	0
Where in a divorce or matrimonial cause or matter a decree nisi is made, and afterwards a decree absolute, no fee shall be payable on the decree absolute.			
58. If a judgment without hearing in court or a final order in a probate action made by a registrar, or if an order made in a probate action or in a divorce or matrimonial cause or matter on a motion, including filing the case or application on which the order is made . . .	0	10	0
59. If made on the hearing of an originating summons, unless otherwise provided	0	10	0
60. If made at chambers in the Chancery Division on the hearing of a cause or matter on further consideration .	0	10	0
61. If made under Order XV., Order XXXII., rule 6, or Order XXXIII., rule 2	0	10	0
62. If made on any application by Order LV., rule 2, directed to be disposed of in chambers, comprised in sections (1), (2), (3), (5), (6), (7) or (10) of the said rule, exclusive of those comprised in section (12) of the same rule	0	10	0
63. If an order of course on a petition of right	0	10	0
64. If an order for a commission on a petition of right . .	1	0	0
65. If an order of course under the Act 6 & 7 Vict. c. 73, to tax a solicitor's bill of costs within twelve months after delivery, or for delivery of a bill of costs by a solicitor where fee No. 7 is not applicable	0	10	0
66. On any other order, including an agreement filed pursuant to Order LII., rule 23, in Admiralty actions, and filing same	0	5	0
67. On signing a note or memorandum of an order pursuant to Order LII., rule 14, when required for production, where no order is drawn up	0	3	0
68. On a memorandum to enter an order nunc pro tunc . .	0	5	0

Schedule of Court Fees.

ON PROCEEDINGS IN THE CHANCERY DIVISION, AT THE JUDGES' CHAMBERS, OR BEFORE A TAXING-MASTER OR DISTRICT REGISTRAR.

	£	s.	d.
69. On the sale or mortgage of any land or hereditaments pursuant to any order directing a sale or mortgage with the approbation of the judge made in any cause or matter for the purpose of raising money to be dealt with by the court in such cause or matter, for every 100*l.* or fraction of 100*l.* of the amount raised	0	2	0
70. On the approval of the purchase of any land or hereditaments, or of the title to any land or hereditaments to be purchased pursuant to any order in any cause or matter with money under the control of the court in such cause or matter, for every 100*l.*, or fraction of 100*l.*, of the amount of the purchase money	0	2	0
71. On proceedings pursuant to an order in any cause or matter where the amount of the outstanding or undisposed of estate of a deceased person or of the estate subject to any trust or partnership shall be ascertained for the purpose of being dealt with in such cause or matter without deducting any payment to creditors or parties interested after the commencement of the cause or matter, for every 100*l.*, or portion of 100*l.*, of the amount or value thereof	0	1	0
72. On taking an account of moneys received by an executor, administrator, trustee, agent, solicitor, mortgagee, cotenant, partner, receiver, guardian, consignee, bailee, manager, provisional official or other liquidator, sequestrator, or execution creditor, or other person liable to account, for every 100*l.*, or fraction of 100*l.*, of the amount found to have been received without deducting any payment	0	1	0

[N.B.—The percentage is to be taken on the amount found to have been received on any periodical account (*Re Crawshay*, 39 C. D. 552).]

73. On taking an account of the debts or ascertaining the amount of any debt due from a deceased person or from any company in any cause or matter when any creditor shall be required to prove his debt otherwise than by production of his security, for every 100*l.*, or fraction of 100*l.*, of the amount found to be due to such creditor, or (if more than one) of the aggregate amount found to be due to all such creditors	0	1	0
74. And in any such case, if after evidence adduced by the creditor his claim shall be disallowed, on each such claim	0	10	0
75. On taking an account of or ascertaining the amount due in respect of the debentures or bonds of a joint stock or other company, for every 100*l.*, or fraction of 100*l.*, of the aggregate amount found to be due	0	2	0
76. On an inquiry to ascertain the heir and next-of-kin, or the heir or next-of-kin of any one or more than one deceased person whose estate is being administered in any cause or matter or in respect of whose estate an application is made under Order LV., rule 3, and on any such inquiry at chambers upon an application under the Act 10 & 11 Vict. c. 96 (the Trustee Relief Act), or the Lands Clauses Consolidation Act, 1845, or any other Act whereby the purchase money of any property sold is directed to be paid into court	1	0	0

	£	s.	d.	Schedule of Court Fees.
77. On settling a list of shareholders entitled to a return, where there is any money to be returned, or a list of contributories, for every person settled on either such list not exceeding 2,000	0	2	0	
78. On settling under the 13th section of the Companies Act, 1867, the list of the creditors of a limited company which proposes to reduce its capital	5	0	0	
79. On settling a scheme pursuant to the Railway Companies Act, 1867, or the Liquidation Act, 1868	5	0	0	
80. On settling a scheme for the management of a charity .	2	0	0	
81. On a certificate of a chief clerk, taxing-master, or district registrar of the result of any proceeding, or taxation of costs before him, including one or any number of matters	0	10	0	

The amount on which the fee No. 69 is payable shall not include the amount which may be payable out of the money raised to any mortgagee or other person entitled to any charge, estate, or interest on or in the property sold when such mortgagee or other person is not in respect of his mortgage, charge, estate, or interest a party to the cause or matter in which the order is made or bound by the proceedings although he may consent to or concur in the sale.

The amount on which the fee No. 71 is payable shall not include any outstanding debts believed to be bad or irrecoverable, nor any property the value of which is undefined or uncertain, nor any property to which the fee No. 69 is applicable, nor any money on which the fee No. 72 shall be payable in the same cause or matter.

The amount on which either of the fees No. 70 and 72 is payable shall not include any sum of money or any money arising from the sale of any property upon which either of the fees No. 69 and 71 shall have been previously paid.

The value of any stocks, funds, debentures, securities, shares, or other property, the price of which is quoted in the London Daily Stock and Share List, published by the authority of the Committee of the Stock Exchange, to which the fee No. 71 is applicable, shall be the closing price quoted in such published list on the day previous to the fixing the amount of such fee.

When the fee No. 72 shall be applicable to any money received which shall be invested or deposited in a bank, and again be received from such investment or deposit, or shall be paid by one person accounting to any other person accounting in the same cause or matter, or in any other similar case, the fee shall not be payable twice on the same money in the same cause or matter.

When a fee shall be payable on the money raised by the sale of property, and the same property shall be resold, in the same cause or matter, the fee payable on the first sale shall be deducted from the fee payable on the second sale.

The amounts for or in respect of which the following fees are payable shall be limited to 200,000*l.* in the following cases—(*a*) the amount raised at any time or times in the same cause or matter in the cases to which the fee No. 69 is applicable; (*b*) the amount of purchase money to be invested pursuant to any one order in the cases to which the fee No. 70 is applicable; (*c*) the amount in the same cause or matter of the value of the outstanding or undisposed of estate whenever ascertained in the cases to which the fee No. 71 is applicable; (*d*) the amount at any time or times in the same cause or matter found to have been received by any executor, administrator, or trustee in the cases to which the fee No. 72 is applicable, except in the case of a trustee directed to account periodically, and in that case, and in all other cases to which the fee No. 72 is applicable, the amount found to be due by any one certificate or on any

Schedule of Court Fees.

one account; (*e*) the amount at any time or times in the same cause or matter found to be due to a creditor or creditors in the cases to which the fee No. 73 is applicable; (*f*) the amount found to be due in respect of debentures or bonds in the cases to which the fee No. 75 is applicable.

[N.B.—(*a*) Applies whether the sales or mortgages are made under one or several orders (*Re Oriental Bank Corp.*, 56 L. T. 731). Notwithstanding the latter part of paragraph (*d*), the percentage is payable on the amount found to have been received on any periodical account (*Re Crawshay*, 39 C. D. 552). Where the accounts are not passed, a fee should be paid proportionate to the work done in Chambers (*S.C.*).]

The fees Nos. 69 to 80 inclusive shall become due and payable by the party conducting the proceedings to which they apply as part of his costs of such proceedings, and be allowed as follows or otherwise as the court or a judge shall direct; that is to say, the fee No. 71 shall become due and payable upon making the certificate or order by which the outstanding or undisposed of estate is ascertained or as to any part thereof the value of which is at that time undefined or uncertain, and which during the further proceedings in the cause or matter shall be realised or the value of which shall be ascertained upon any order or certificate made when or after the same shall be so realised or the value thereof ascertained. The fee No. 72 on taking the account of a receiver, guardian, consignee, bailee, manager, liquidator, sequestrator, or execution creditor, or a trustee directed to pass his accounts periodically shall, upon payment, be allowed in the account, unless otherwise ordered by the court or a judge. The fee No. 72 in the other cases to which it applies, and the fees Nos. 69, 70, and 73 to 80 inclusive, shall become due and payable by the party conducting the proceeding, on making the certificate or order on the result of the sale, purchase, account, inquiry, or other proceeding to which the fee is applicable; but if the court or a judge shall be of opinion that the costs of the party liable to the payment of any such fees will become payable out of any funds or moneys in court or to be brought into court, the court or judge may suspend the payment of any such fees until such funds or moneys are dealt with, or for such other time as may be thought fit, in which case the amount payable shall be stated in the certificate or order upon which the same are payable, or in some subsequent certificate or order, and where such fees have not been paid, and the costs are directed to be paid out of money in court or out of the proceeds of securities in court, the taxing-master shall certify the amount of fees payable in respect of such proceedings, and the paymaster shall, if so provided by the Rules under the Supreme Court of Judicature (Funds, &c.) Act, 1883, carry over the amount so certified to be payable from the account to which such moneys or proceeds are placed to a separate account in the books of the Pay Office for fees on proceedings or otherwise as shall be provided by such rules, and the amount shall from time to time, as the Treasury may direct, be paid to the account of Her Majesty's Exchequer.

[As to carrying over fees on proceedings and taxation, see S. C. F. R. (94), r. 67, in Part III., *post*.]

N.B.—Where an account is directed of the receipts of the executors of a testator, and another account of the receipts of the trustees of the will, and only one account has been kept, the officers of the court are entitled to a double percentage (*Armitage* v. *Elworthy*, 13 C. D. 91).

Where accounts are referred to an accountant, and adopted by the Chief Clerk and certified, the percentage payable under the orders of the Court will still be payable (*Re Hutchinson*, 32 W. R. 392).

ON PROCEEDINGS IN THE QUEEN'S BENCH AND PROBATE DIVORCE AND ADMIRALTY DIVISIONS, EXCEPT IN ADMIRALTY ACTIONS, BEFORE A MASTER REGISTRAR OR DISTRICT REGISTRAR.

Schedule of Court Fees.

	£ s. d.
82. The fee No. 72 on taking accounts applicable to proceedings in the Chancery Division upon similar proceedings in these Divisions—	
83. On every other reference, investigation, or inquiry, including examination of witnesses, if any, for every hour or part of an hour the officer is occupied . .	0 10 0

ON PROCEEDINGS IN THE PROBATE DIVORCE AND ADMIRALTY DIVISION, IN ADMIRALTY ACTIONS ON REFERENCES BEFORE A REGISTRAR OR DISTRICT REGISTRAR.

84. On any reference to the registrar, including examination of witnesses, if any, having regard to the nature and importance of the accounts and other matters, and to the time occupied	From 5 5 0 to 15 15 0
85. If the attendance of one or more merchants is required, for each merchant the same fees as to the registrar .	From 5 5 0 to 15 15 0
86. In cases of great intricacy, or very large amount, occupying more than two full days, larger fees may be taken, not exceeding five guineas additional per day to the registrar and for each merchant, for every day beyond two full days.	
87. In cases where the accounts to be investigated do not exceed 500*l.*, and where the time occupied is short; fees may be taken for the registrar and each merchant of	From 1 1 0 to 4 4 0

PROCEEDINGS BEFORE AN OFFICIAL REFEREE.

[*Trial in the Country.*]

88. On every reference. [See now Order of Dec. 1887, *post.*]	5 0 0
89. And for every hour or part of an hour he is occupied beyond two full days	0 10 0
90. On every sitting elsewhere than in London or Middlesex a further fee for every night the official referee shall be absent from London	1 11 6
91. And for his clerk	0 15 0
[*Trial in London or Middlesex—* *For every hour or part of an hour the Referee is occupied, including examination of witnesses, if any* . . .	0 10 0

See Order of Dec., 1887, *post.*]

The fees Nos. 82 to 91 inclusive shall become due and payable by the party conducting the proceedings on the report of the result of the reference or otherwise as hereinafter provided where no such report is made.

The above-mentioned fees Nos. 69 to 80 and 82 to 91 inclusive shall be due and payable, when no certificate, report, or order is made, by the party conducting the proceedings on the completion of such proceedings, or if not completed a due proportion shall be payable on so much of the proceedings as shall have taken place, the amount to be fixed by the officer.

In these cases the fees shall be paid by stamps impressed upon or affixed to a memorandum stating on what account such fees are paid.

Schedule of Court Fees.

A deposit of stamps on account of the fees applicable to any proceeding may be required before such proceeding is commenced, or at any time during the course thereof, and in Admiralty actions when Order LVI., rule 4, applies such stamps shall be affixed as therein provided, and in all other cases a memorandum of the amount deposited shall be delivered to the party making the deposit.

IN THE ADMIRALTY MARSHAL'S OFFICE.	£	s.	d.
92. On the execution of a warrant	2	0	0
93. On the execution of an attachment, for every person attached	1	0	0
94. On the execution of any decree, order, commission, or other instrument under Order LXVII.	1	0	0
95. On attending, appointing, and swearing appraisers	1	0	0
96. On delivering up a ship or goods to a purchaser agreeably to the inventory	1	0	0
97. On attending the delivery of cargo, or sale or removal of a ship or goods, per day	2	0	0
98. On retaining possession of a ship with or without cargo, or of a ship's cargo without a ship, to include the cost of a ship keeper, if required, per day	0	5	0
99. On a report as to the sufficiency of sureties	0	10	0
100. If the marshal or any of his substitutes is required to go a greater distance than five miles from his office to perform any of the above duties, he shall be entitled to his reasonable expenses for travelling, board, and maintenance, in addition to the above fees.			
101. On the sale of any vessel or goods sold pursuant to a decree or order of the court, for every 50*l.* or fraction of 50*l.* realised	0	10	0

[*Note.*—See Order dated 19th December, 1896, made under the Public Offices Fees Act, 1879, *post*, p. 228].

TAXATION OF COSTS.

102. On taxing a bill of costs where the amount allowed does not exceed 4*l.*	0	2	0
103. Where the amount exceeds 4*l.*, for every 2*l.* allowed or a fraction thereof	0	1	0

These fees, unless otherwise provided, shall be taken on signing the certificate or on the allowance of the bill of costs as taxed; but the fees shall be due and payable, if no certificate or allocatur is required, on the amount of the bill as taxed, or on the amount of such part thereof as may be taxed, and the solicitor or party suing in person shall in such case cause the proper stamps (the amount thereof to be fixed by the officer) to be impressed on or affixed to the bill of costs.

The taxing officer may require a deposit of stamps on account of fees before taxation not exceeding the fees on the full amount of the costs as submitted for taxation, and the officer or his clerk on taking such deposit shall make a memorandum thereof on the bill of costs.

Order V., rule 58, of the Chancery Funds Consolidated Rules, 1874, shall continue to be acted upon in cases to which it is applicable.

[This rule is now repealed, and rule 67 of the S. C. F. R., 1894, (Part III., *post*) which is identical in effect, is substituted for it.]

ON PROCEEDINGS IN THE PAY OFFICE OF THE SUPREME COURT. (See Part III., *post*.)

Schedule of Court Fees.

	£	s.	d.
104. On a certificate of the amount and description of any money, funds, or securities, including the request therefor	0	1	0
105. On a transcript of an account for each opening, including the request therefor	0	2	0
106. On a request to the paymaster, Bank of England, or a registrar of the Probate Divorce and Admiralty Division (unless otherwise provided), for any of the following purposes: paying, lodging, transferring, or depositing money, funds, or securities in court without an order, or money in addition to the amount directed by an order to be paid in; paying out of court any money without an order or a certificate of a taxing officer; information in writing in respect of any money, funds, or securities, or any transaction in the pay office	0	1	0
107. On a request for information respecting any money, funds, or securities to the credit of any cause or matter contained in any list prepared by the paymaster of causes and matters to the credit of which any money, funds, or securities have not been dealt with during 15 years	0	2	6
108. On an affidavit for the purpose of paying, transferring, or depositing any money, funds, or securities in court pursuant to the Statute 10 & 11 Vict. c. 96	0	1	0
109. On preparing a power of attorney	0	3	0

REGISTER OF JUDGMENTS AND LIS PENDENS.

110. On registering a judgment or lis pendens, *although more than one name* may have to be registered	0	2	6
111. On re-registering same	0	1	0
112. On a search for each name	0	1	0
113. On a certificate of entry of satisfaction	0	1	0
114. On a request for a search and certificate pursuant to Order LXI., rule 23	0	5	0
115. If more than one name included in the same request, for each additional name	0	2	0
116. On a duplicate certificate, if not more than three folios	0	1	0
117. For every additional folio	0	0	6
118. On every continuation search, if requested within 14 days of any former search (the result to be endorsed on such certificate)	0	1	0
119. On a certificate of a judgment for registration in Ireland or Scotland under the Judgments Extension Act, 1868, including affidavit	0	2	0
120. On filing for registration a certificate issued out of the Courts of Dublin or Court of Session in Scotland under the last-mentioned Act, although more than one name may have to be registered under the said Act	0	7	0
121. On every certificate of the entry of a satisfaction under the last-mentioned Act	0	1	0
122. On a search made in one or both of the registers of Irish and Scotch judgments, for each name	0	1	0
[The following fees are fixed by statute:— For registering annuity under 18 & 19 Vict. c. 15, for *each name*	0	2	6

Schedule of Court Fees.

	£	s.	d.
(Fixed by s. 12 of the Act.) For entry of satisfaction of registered Judgment or Lis Pendens, under 23 & 24 Vict. c. 115, for each Judgment or Lis Pendens, *although more than one name*	0	2	6
(Fixed by s. 2 of the Act.) For every certificate of entry of satisfaction . . .	0	1	0
(Fixed by s. 2 of same Act.) For re-registration of Crown Debt, under 22 & 23 Vict. c. 35, s. 22, for *each name*	0	1	0
(See 2 & 3 Vict. c. 11, s. 4.)]			
MISCELLANEOUS.			
123. On a report of a Private Bill in Parliament	5	0	0
124. On an allowance of bye-laws or table of fees	1	0	0
125. On a fiat of a judge	0	5	0
126. On signing, settling, or approving an advertisement .	0	10	0
127. On taking the acknowledgment of a deed by a married woman	1	0	0
128. On an appointment of a receiver in a Probate action .	1	0	0
129. On taking a recognisance or bond, whether one or more than one recognisor or obligor, and whether entered into by all at one time or not	0	10	0
130. On assignment of a bond	0	5	0
131. On taking bail, and taking same off the file and delivering	0	2	0
132. On a commitment	0	5	0
133. On an application to produce judges' notes	0	5	0
134. On appointment of commissioners under glebe exchange .	1	0	0
135. On vacating a recognisance	0	10	0
136. On a citation	0	5	0
137. On the admission or re-admission of a solicitor . . .	5	0	0
138. On filing a claim in the Admiralty registry for repayment of the excess of wages paid to a substitute hired in the place of a volunteer into the Royal Navy, including copy sent to the Admiralty	0	10	0
139. On the opinion of the Admiralty registrar objecting to the claim	0	10	0
140. On a certificate of the Admiralty registrar ordering payment of amount due, including the copy to be sent to the accountant-general of the Navy	0	10	0
141. On registering in the Admiralty registry a power of attorney for a Queen's ship generally, and a copy thereof for the accountant-general of the Navy . .	1	10	0
142. On registering same specially	0	10	0
143. On taking accounts by the Admiralty registrar in naval prize matters	0	5	0
144. On Admiralty registrar writing letters in regard to naval prize matters	0	10	0

No fee is payable on the transfer of money from the Admiralty registry to the naval prize account.

(Fee No. 145 was abolished by order dated 22nd January, 1897. See W. N. (97) Misc. 57.)

ORDER AS TO SUPREME COURT FEES.

OCTOBER, 1884.

I, the Right Honourable Roundell, Earl of Selborne, Lord High Chancellor of Great Britain, by and with the advice and consent of the undersigned Judges of the Supreme Court, and with the concurrence of the Lords Commissioners of Her Majesty's Treasury, do hereby, in pursuance and execution of the powers given by the Supreme Court of Judicature Act, 1875, and all other powers and authorities enabling me in this behalf, order and direct in manner following :—

The fees hereunder written are fixed and appointed to be, and shall be, taken on appeals brought on or after the twenty-fourth day of October, 1884, from Inferior Courts, notwithstanding anything in the Order as to Supreme Court Fees, 1884, contained.

	£	s.	d
On filing	0	10	0
On hearing	1	0	0
On drawing up judgment	0	10	0

[See fees No. 52 and 57 in Schedule of Fees, *ante*.]

The 21st day of August, 1884.

ORDER AS TO SUPREME COURT FEES.

DECEMBER, 1887.

I, the Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, by and with the advice and consent of the undersigned Judges of the Supreme Court, and with the concurrence of the Lords Commissioners of Her Majesty's Treasury, do hereby, in pursuance and execution of the powers given by the Supreme Court of Judicature Act, 1875, and all other powers and authorities enabling me in this behalf, order and direct in manner following:—

In proceedings before an Official Referee in London or Middlesex the fee on every reference, in lieu of the fee of 5*l*. prescribed by the Order as to Supreme Court Fees, 1884, shall be for every hour or part of an hour the Referee is occupied, including examination of witnesses, if any, 10*s*.

[See fee No. 88 in Schedule of Fees, *ante*.]

The 20th day of December, 1887.

ORDER AS TO THE FEES AND PERCENTAGES WHICH ARE REQUIRED TO BE TAKEN IN THE SUPREME COURT OF JUDICATURE BY MEANS OF STAMPS.

4TH JULY, 1884.

WHEREAS by section 26 of the Supreme Court of Judicature Act, 1875, it is provided that the fees and percentages appointed to be taken in the High Court of Justice and in the Court of Appeal, and in any court to be created by any commission, and in any office which is connected with any of those courts, or in which any business connected with any of those courts is conducted, shall, except so far as may be otherwise directed, be taken by means of stamps; and further, that such stamps shall be impressed or adhesive, as the Treasury may from time to time direct; and that the Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules as may seem fit for publishing the amount of the fees and regulating the use of such stamps, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for ensuring the proper cancellation of such stamps, and for keeping accounts of such stamps.

Now, we, the undersigned, being two of the Lords Commissioners of Her Majesty's Treasury, do, with the concurrence of the Lord Chancellor, hereby give notice, and order and direct:—

[This order practically supersedes the orders as to stamps of the 22nd April, 1876, and 12th June, 1881. (See A. P. 1883—4, pp. 637, 644.)]

1. That from and after the date at which this order shall come into operation the stamps used for denoting the said fees and percentages shall be of the character, and be applied and otherwise dealt with in the manner, prescribed in the schedule hereto.

2. That the adhesive stamps at present in use in the Supreme Court

of Judicature shall continue to be used so long as they are supplied by the commissioners of inland revenue.

[This rule is from order of 22nd April, 1876, r. 2.]

3. That in any case in which a deposit of stamps is required, pursuant to the Order as to Supreme Court Fees, 1884, such deposit shall be made in the manner provided by such order.

[See the provisions in the schedule to the order of 1884, as to deposit of fees, *ante*.

Rule 3 of the order of 22nd April, 1876, contained certain provisions as to deposit of fees which are not in the order of 1884.]

ORDER UNDER THE PUBLIC OFFICES FEES ACT, 1879.

ORDER as to the payment of certain Fees and Percentages, or Poundages, payable in the Admiralty Division of the Supreme Court of Judicature. by means of a transfer in the Paymaster's books, in lieu of Stamps.

42 & 43 Vict. c. 58.

WE, two of the Lords Commissioners of Her Majesty's Treasury, in pursuance and execution of the powers given by "The Public Offices Fees Act, 1879," with the consent of the Lord Chancellor, do hereby direct that from and after the 1st January, 1897, inclusive, the Fees and Poundages, or Percentages, payable in stamps under the "Order as to Supreme Court Fees, 1884," and the "Order as to the Fees and Percentages which are required to be taken in the Supreme Court of Judicature by means of Stamps," dated 4th July, 1884, or other Orders, in the Admiralty Division of the said Court, in respect of the sale of Vessels, &c., sold by the order of the Court, in cases pending in the Principal Registry and in the Liverpool and Manchester District Registries, may, so far as such Fees and Poundages and Percentages are included in the charges comprised in the Account Sales of the Admiralty Marshal, be paid in cash in lieu of stamps, viz., by means of transfers by the Paymaster of the Supreme Court from the Funds in Court, to an account kept in his books for Fees on Proceedings, or to such other accounts as the Treasury may from time to time direct.

Dated the 19th day of December, 1896.

ORDER AS TO THE CANCELLATION OF STAMPS BY MEANS OF WHICH FEES AND PERCENTAGES ARE TAKEN IN THE SUPREME COURT OF JUDICATURE.

WHEREAS by an Order, dated the 4th day of July, 1884, made under section 26 of the Supreme Court of Judicature Act, 1875, upon the subject of the fees and percentages which are required to be taken in the Supreme Court of Judicature by means of stamps, it is, amongst other matters, provided, in regard to the cancellation of stamps, as follows, viz.:—

"The cancellation shall be effected in such manner as the Commissioners of Inland Revenue shall from time to time direct.

"It shall be obligatory on all officers of the Supreme Court charged with the duty of cancelling adhesive stamps to see that all such stamps, although obliterated by a written or printed cancellation, shall be afterwards cancelled by means of perforation."

And whereas it is now deemed expedient to resort to a different system of cancelling the said adhesive stamps:—

Now we, the undersigned, being two of the Lords Commissioners of Her Majesty's Treasury, do, with the concurrence of the Lord Chancellor, hereby give notice, and order and direct:—

That from and after the 1st day of July next the system of cancelling the said adhesive stamps which is now in force, shall be discontinued, and, in place thereof, the said adhesive stamps shall each be defaced, in indelible ink, by a hand stamp bearing the word "cancelled" and the date of cancelling.

THE SCHEDULE ABOVE REFERRED TO.

[*Note:* ED.—This Schedule must be taken as liable to alteration, and subject to the general regulation of the Treasury that, wherever it is possible, impressed stamps are to be used in lieu of adhesive.]

The official forms, with impressed or adhesive stamps (as the case may be), required in any court or office of the Supreme Court, in respect of any proceedings herein referred to, may be obtained at the Inland Revenue Offices, Royal Courts of Justice.

Forms and stamps for use in the Principal Probate Registry (which except for searches are all adhesive) can be purchased from the licensed vendors at Somerset House.

Summonses, Writs, Commissions, and Warrants.

——	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On sealing a writ of summons for commencement of an action. On sealing a concurrent, renewed, or amended writ of summons for commencement of an action.	Writ of summons.	Impressed.	
On sealing a notice for service under Order 16, r. 48.	Notice . .	Impressed or adhesive.	
On sealing a writ of mandamus On sealing a writ of subpœna not exceeding three persons. On sealing a writ of execution, a subpœna pursuant to the Court of Probate Act, 1858, s. 23, and every other writ.	Præcipe left at time of issuing writ .	Impressed, adhesive in Probate Registry.	
On sealing or issuing any originating summons.	Summons . .	Impressed.	
On amending same.	Præcipe . .	Adhesive.	
On sealing or issuing a summons for directions under Order 30.	Summons . .	Impressed or adhesive.	
On sealing or issuing any other summons or taxing-master's warrant.	Summons or warrant.	Impressed or adhesive.	
On filing a notice to have a reference to an Admiralty Registrar placed in the list for hearing. On a notice in Admiralty actions pursuant to Order 67, r. 10.	Notice . .	Impressed.	
On sealing or issuing a commission to take oaths or affidavits in the Supreme Court.	Commission . .	Impressed.	The commission or the copy of petition to be written on impressed paper, or the document to be produced at the Inland Revenue, Royal Courts of Justice, to be stamped.
On every other commission.	Commission .	Impressed, adhesive in Probate Registry.	
On marking a copy of a petition of right for service.	Copy of petition	Impressed .	

Appearances.

The fee payable on entering or amending an appearance shall be denoted by an impressed stamp on the form of memorandum as prescribed by the Appendix to the Rules of the Supreme Court, 1883, and where the appearance of more than one person is entered by the same memorandum, the fees for all persons beyond the first shall be denoted by means of impressed stamps.

[See forms of memorandum in App. A., Pt. II., *ante*, Part I.]

Forms of memorandum of appearance with the impressed stamp for one or more defendants will be sold at the Inland Revenue Office, Royal Courts of Justice.

Copies.

—	Document to be Stamped.	Character of Stamp to be used.
On a copy of a written deposition of a witness to enable a party to print the same.	Copy . . .	Impressed or adhesive.
On examining a written or printed copy, and marking or sealing same as an office copy.	Copy . . .	Impressed or adhesive.
On making a copy, and marking same as an office copy.	Copy . . .	Impressed or adhesive.
On a copy in a foreign language	Copy . . .	Impressed or adhesive.
On a copy of a plan, map, section, drawing, photograph, or diagram.	Præcipe or copy	Impressed or adhesive.
On a printed copy of an order, not being an office or certified copy.	Copy . . .	Impressed or adhesive.

Attendances.

The fees payable under this heading shall be denoted either by an impressed or adhesive stamp on the subpœna, notice, or other document requiring the attendance of the officer.

[The Schedule to the Order of 22nd April, 1876, also contained the following additional provision under this heading, viz., "If the officer's attendance be required beyond one day, the additional fee per diem after the first to be taken by means of a præcipe with the impressed stamp, filed in the department from which the officer is summoned."]

Oaths, &c.

—	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On taking an affidavit or an affirmation or attestation upon honour in lieu of an affidavit or a declaration, except for the purpose of receipt of dividends from the Paymaster-General.	Affidavit or other document answering thereto.	Impressed or adhesive.	

Oaths, &c.—(*continued*).

——	Document to be Stamped, and Character of Stamp to be used.	Regulations and Observations.
And in addition thereto, for each exhibit therein referred to and required to be marked.	Stamps to be impressed or adhesive on affidavit.	The amount of stamps should be marked on the office copy.

Filing.

——	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On filing a special case or petition of right.	Special case, petition of right, or præcipe.	Impressed .	Where practicable stamp to be on special case or petition of right, and in other cases on præcipe filed.
On filing, except in Admiralty actions, an affidavit, deposition, or set of depositions (including any exhibits annexed to any such affidavit or deposition), statement of claim in default of appearance, official and special referees' certificates, petition, preliminary act, submission to arbitration, award, warrant of attorney, cognovit, bail satisfaction piece, bond, writ of execution with return, and power of attorney, and every other proceeding in a probate action or in a divorce or other matrimonial cause or matter required by Act of Parliament, general order, or order in the action, cause, or matter to be filed in the Principal Probate Registry.	Document filed.	Impressed or adhesive.	
On filing a scheme pursuant to the statute 30 & 31 Vict. c. 127, or the Liquidation Act, 1868.	Scheme . .	Impressed.	
On filing scrips in a probate action or on depositing, pursuant to an order in any cause or matter, any documents for safe custody or production.	Affidavit or order	Adhesive.	

Filing—(*continued*).

—	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On a receipt for any document or documents to which the two last fees apply, when delivered out, or for any other document or documents when delivered out of the Principal Probate Registry.	Receipt . .	Adhesive.	
On filing an affidavit and notice under Order 46, r. 4.	Affidavit . .	Impressed.	
On every minute in Admiralty actions pursuant to Order 66, r. 8, for every instrument or document to which the minute relates (other than an exhibit, or any instrument or document previously issued from the registry or the Marshal's office).	Minute . .	Impressed or adhesive.	
On filing a bill of sale and affidavit therewith.	Bill of Sale .	Impressed.	
On filing under the Bills of Sale Acts, 1878 and 1882, any other document.	Document . .	Impressed.	
On filing an affidavit of re-registration of a bill of sale.	Affidavit . .	Impressed.	
On filing a fiat of satisfaction.	Fiat . . .	Impressed.	

Certificates.

—	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On a certificate of appearance, or of a pleading, affidavit, or proceeding having been entered, filed, or taken, or of the negative thereof, including certificate for use in a foreign country, and certificate of proceedings pursuant to Order 61, r. 24.	Certificate . .	Impressed or adhesive.	

Searches and Inspections.

The fees on searches and inspections shall be taken by means of impressed stamps on a form of application which will be issued and sold at the Inland Revenue Office, Royal Courts of Justice; or, for the Principal Probate Registry, at Somerset House.

Examination of Witnesses.

The fees under this heading may still be denoted by means of adhesive stamps, which may be affixed either to the deposition or to the order or memorandum of appointment for an examination.

Hearing.

——	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On entering or setting down, or re-entering or re-setting down, an appeal to the Court of Appeal, or a cause or matter for trial or hearing in any Court in London or Middlesex, or at any assizes, including hearing or further consideration when no fee was paid on the original hearing, whether on summons adjourned from chambers or otherwise, and including special case, a petition in a divorce or matrimonial cause or matter by which a proceeding is commenced, and petition of right, but not any other petition, nor any other summons adjourned from chambers.	In the Chancery Registrars' Office, on forms provided for the purpose .	Impressed.	
	At offices of Associates on copy of pleadings .	Impressed or adhesive.	
	At all other offices of the High Court or Court of Appeal on præcipe .	Impressed or adhesive in Probate Registry.	
On entering directions of the judge at a trial and certifying same if required.	Certificate . .	Impressed or adhesive.	
On writing for the attendance of Trinity Masters or other assessors on the hearing of an Admiralty action.	Præcipe . .	Impressed.	
On answering and setting down for hearing in court a petition by which any proceeding is commenced on [*sic*] any other petition.	Petition . .	Impressed.	

Judgments, Decrees and Orders.

——	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On drawing up and entering a judgment, decree, or order, whether on the original hearing of a cause or on further consideration, including a cause commenced by summons at chambers, and an order on the hearing of a special case or petition, and any order by the Court of Appeal or any other order or judgment.	Judgment, decree, or order.	Stamp to be impressed on the judgment or order, except at the Crown Office, where adhesive stamps may for the present be also admitted, but, as far as practicable, a præcipe, with an impressed stamp, should in all cases be used. Adhesive stamps to be used in the Principal Probate Registry.	
On signing a note or memorandum of an order, pursuant to Order LII. r. 14, when required for production, where no order is drawn up.	Note or memorandum.	Impressed or adhesive.	
On a memorandum to enter an order *nunc pro tunc*.	Memorandum .	Impressed.	
For copy of a plan, map, section, drawing, photograph, or diagram required to accompany any order.	Copy . . .	Impressed or adhesive.	Where an adhesive stamp would damage the copy, a præcipe with the impressed stamp should be used.

Proceedings at Judge's Chambers or before a Master, Registrar, District Registrar, or Official Referee.

The fees payable on these proceedings shall be paid in the manner provided by the Order as to Supreme Court Fees, 1884, either by impressed or adhesive stamps, and where any such fees become due and payable upon making a certificate or order they shall be impressed or attached on the certificate or order. When any such fee is impressed or attached on an order, the officer who enters the order shall note on the entry the amount of the fee appearing on the order; and where any such fee is impressed or attached on a certificate the amount thereof shall be noted on every office copy thereof.

[See provisions under No. 91 in Schedule of Fees, 1884, *ante*.]

In the Admiralty Marshal's Office.

——	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On the execution of a warrant .	Warrant . .	Impressed.	
On the execution of an attachment, for every person attached.	Attachment . .	Impressed or adhesive.	
On the execution of any decree, order, commission, or other instrument under Order LXVII.	Instrument .	Impressed.	
On attending, appointing, and swearing appraisers.	Certificate of appraisement.	Impressed.	
On delivering up a ship or goods to a purchaser agreeably to the inventory.	Account sales .	Impressed.	
On attending the unlivery of cargo or sale or removal of a ship or goods per day.	Certificate of execution.	Impressed .	The Marshal's certificate of execution shall be attached to document ordering the unlivery sale or removal. The Marshal's certificate of release shall be attached to the instrument of release.
On retaining possession of a ship with or without cargo, or of a ship's cargo without a ship, to include the cost of a shipkeeper, if required, per day.	Certificate of release if property released. Account sales if property sold.	Impressed.	
On a report as to the sufficiency of sureties.	Report . .	Impressed.	
On the sale of any vessel or goods sold pursuant to a Decree or Order of the Court for every 50*l.* or fraction of 50*l.* realised.	Account sales .	Impressed.	

Taxation of Costs.

——	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
For taxing a bill of costs . .	Bill . . .	Impressed or adhesive.	in any case in which the fees have not been paid by stamps on the bill of costs, and a certificate is used, the fee to be denoted by impressed stamp on the certificate.
For a certificate of the result.	Certificate . .	Impressed.	

[*Note.*—The practice in the Chancery Taxing Office is to require the stamps to be impressed on bills of costs in all cases.]

On Proceedings in the Pay Office of the Supreme Court.

——	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On a certificate of the amount and description of any money, funds, or securities, including the request therefor.	Request . .	Impressed.	
On a transcript of an account for each opening, including the request therefor.	Transcript . .	Impressed.	
On a request to the Paymaster, Bank of England, or a Registrar of the Probate, Divorce, and Admiralty Division (unless otherwise provided), for any of the following purposes: paying, lodging, transferring, or depositing money, funds, or securities in Court without an order, or money in addition to the amount directed by an order to be paid in; paying out of Court any money without an order or certificate of a taxing officer.	Request . .	Impressed.	
On a request for information in writing in respect of any money, funds, or securities, or any transaction in the Pay Office.	Request . .	Impressed or adhesive.	
On a request for information respecting any money, funds, or securities to the credit of any cause or matter contained in any list prepared by the Paymaster of causes and matters to the credit of which any money, funds, or securities have not been dealt with during 15 years.	Request . .	Impressed or adhesive.	
On an affidavit for the purpose of paying, transferring, or depositing any money, funds, or securities in Court pursuant to the Statute 10 & 11 Vict. c. 96.	Office copy of schedule.	Impressed.	
On preparing a power of attorney.	Power of attorney.	Impressed.	

Register of Judgments and Lis Pendens.

——	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On registering a judgment or lis pendens	Memorandum of registry .	Impressed.	
On re-registering same . . .			
On a search	General form of search præcipe		
On a certificate of entry of satisfaction.	Certificate . .		
On a request for search and certificate pursuant to Order LXI., rule 23.	Certificate . .	Impressed or adhesive.	
On a duplicate certificate . .	Certificate . .	Impressed or adhesive.	
On a continuation search . .	Original certificate.	Impressed or adhesive.	
On a certificate of a judgment for registration in Ireland or Scotland under the Judgments Extension Act, 1868, including affidavit	Certificate .	Impressed or adhesive.	
On filing for registration a certificate issued out of Courts of Dublin or Court of Session in Scotland under the same Act .			
On every certificate of the entry of a satisfaction under the same Act			
On a search made in one or both of the registers of Irish or Scotch judgments.	Præcipe . . .	Impressed.	

Miscellaneous.

——	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On a report of a private bill in Parliament.	Report . .	Impressed.	
On an allowance of bye-laws or table of fees.	Allowance . .	Impressed.	
On a fiat of a judge . . .	Fiat . . .	Impressed.	
On signing, settling, or approving an advertisement.	Advertisement .	Impressed, or adhesive in Probate Registry.	
On taking acknowledgment of a deed by a married woman.	Acknowledgment.	Impressed.	
On taking a recognizance or bond.	Recognizance .	Impressed.	
On assignment of a bond . .	Assignment .	Adhesive.	

Miscellaneous—(*continued*).

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On taking bail, and taking same off the file and delivering.	Bail piece . .	Impressed.	
On a commitment	Commitment .	Impressed.	
On an application to produce judges' notes.	Application . .	Impressed.	
On appointment of commissioners under glebe exchange.	Appointment .	Impressed.	
On vacating a recognizance .	Recognizance .	Impressed.	
On a citation	Præcipe . .	Adhesive.	
On admission or re-admission of a solicitor.	Admission . .	Impressed.	
On filing a claim in the Admiralty Registry for repayment of the excess of wages paid to a substitute hired in the place of a volunteer into the Royal Navy, including copy sent to the Admiralty.	Claim . .	Impressed or adhesive.	
On the opinion of the Admiralty Registrar objecting to the claim.	Document. .	Impressed.	
On a certificate of the Admiralty Registrar ordering payment of amount due, including the copy to be sent to the Accountant-General of the Navy.	Certificate. .	Impressed.	
On registering in the Admiralty Registry a power of attorney for a queen's ship generally, and a copy thereof for the Accountant-General of the Navy.	Power of attorney.	Impressed.	
On registering same specially .	Power of attorney.	Impressed.	
On taking accounts by the Admiralty Registrar in Naval Prize matters.	Account . .	Impressed or adhesive.	
On Admiralty Registrar writing letters in regard to Naval Prize matters.	Document . .	Impressed or adhesive.	
On every 50*l*., or fraction of 50*l*., paid out of the Admiralty Registry in any action, or to the Naval Prize Account.	Account . .	Impressed or adhesive.	
Any other proceeding, pleading, or document not hereinbefore specified.	Document or præcipe.	Impressed or adhesive.	These are to be impressed, if practicable, where not filed in the office.

General Directions.

In any case in which the use of impressed stamps is prescribed, paper or parchment on which the document requiring a stamp is to be written may be stamped at the Inland Revenue Office, Royal Courts of Justice, notwithstanding that stamped forms are also provided by the Commissioners of Inland Revenue.

The cancellation shall be effected in such manner as the Commissioners of Inland Revenue shall from time to time direct.

It shall be obligatory on all officers of the Supreme Court charged with the duty of cancelling adhesive stamps to see that all such stamps, although obliterated by a written or printed cancellation, be afterwards cancelled by means of perforation.

This Order shall come into operation on the 18th day of July, 1884.

Dated the 4th day of July, 1884.

CHARLES C. COTES,
R. W. DUFF,
Two of the Lords of Her Majesty's Treasury.

I concur in this Order,
SELBORNE, C.

ORDER AS TO FEES—LIVERPOOL DISTRICT REGISTRY.

WHEREAS by section 26 of the Supreme Court of Judicature Act, 1875, it is provided that the fees and percentages appointed to be taken in the High Court of Justice and in the Court of Appeal, and in any Court to be created by any Commission, and in any office which is connected with any of those Courts, or in which any business connected with any of those Courts is conducted, shall, except so far as may be otherwise directed, be taken by means of stamps; and further, that such stamps shall be impressed or adhesive, as the Treasury may from time to time direct; and that the Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules as may seem fit for publishing the amount of the fees and regulating the use of such stamps, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for ensuring the proper cancellation of such stamps, and for keeping accounts of such stamps.

And whereas by an Order dated the 4th day of July, 1884, made by the Treasury with the concurrence of the Lord Chancellor, certain regulations were prescribed for the use of stamps in the High Court of Justice and Court of Appeal, and whereas it is expedient to amend the said Order so far as relates to the District Registry of the High Court of Justice at Liverpool.

Now we the undersigned, being two of the Lords Commissioners of Her Majesty's Treasury, do, with the concurrence of the Lord Chancellor, hereby order and direct as follows:—

The said Order of the 4th July, 1884, shall apply to the District Registry of the High Court of Justice at Liverpool, subject to the following modifications:—

(1) Before the document to which any adhesive Judicature stamp is attached or (in the case of a præcipe) to which it relates is sealed or in any way acted upon, such stamp shall be impressed with a "Combination Die," bearing the date of impression.

(2) An adhesive stamp when so impressed shall be deemed to be either an adhesive or an impressed stamp within the meaning of the said Order of the 4th July, 1884, and shall not need cancellation.

(3) This Order shall not apply to proceedings in the Liverpool District Probate Registry.

(4) This Order shall come into operation on the first day of July next.

Dated this 17th day of June, 1891.

SIDNEY HERBERT,
T. H. WALROND,
Two of the Lords Commissioners of Her Majesty's Treasury.

I concur in this Order,
HALSBURY, C.

As modified by Order dated 13th July, 1897, which came into operation on 1st Aug. 1897. The Order was not published in the "Gazette."

ORDER AS TO FEES.

THE SHERIFFS ACT, 1887.

AUGUST 31st, 1888.

I, Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, by and with the advice and consent of the undersigned Judges of the Court of Appeal and High Court of Justice, and with the concurrence of the Lords Commissioners of Her Majesty's Treasury, do hereby, in pursuance and execution of the powers given by the Sheriffs Act, 1887, fix the fees set forth in the schedule hereto annexed as the fees to be demanded, taken, and received by any sheriff or officer of a sheriff concerned in the execution of process directed to the sheriff in the several proceedings mentioned in the said schedule as from the date of this order.

(Signed) HALSBURY, C.
COLERIDGE, C.J.
ESHER, M.R.
C. E. POLLOCK, B.

We concur,
HERBERT EUSTACE MAXWELL,
SIDNEY HERBERT,
Lords Commissioners of
Her Majesty's Treasury.

Dated the 31st day of August, 1888.

"**To be Demanded.**" — *Overcharge.* — An overcharge made from an innocent mistake does not render a sheriff liable to penalties under Sheriffs Act, 1887, sec. 29 (2) (*b*) (*Lee* v. *Dangar*, (1892) 1 Q. B. 231; 2 Q. B. 337).

TABLE OF FEES.

Execution of Writs of Fieri Facias.

(Cf. O. 42, r. 15.)

[*Note.*—This Table applies only to writs of fi. fa. For other fees, see Table under 1 Vict. c. 55, *infra.*

The old common law rule still holds good, that if there was one seizure in one place and then the sheriff had subsequently a second writ delivered to him, unless there was a further seizure, in fact, in a different place from that where he had already seized, he had no right to charge for a second seizure (*Per* Vaughan Williams, J., *Re Wells*, 68 L. T. 231).]

	£	s.	d.
1. For expenses incurred by the sheriff's officer in making inquiries as to the goods of an execution debtor, and as to claims for rent and other claims on the goods, the actual expenses not exceeding under any circumstances	1	1	0

A sheriff's officer cannot sue for fees due under an abortive execution. He must leave them to be recovered by the sheriff (*Smith* v. *Broadbent*, (1892) 1 Q. B. 551).

See *Townend* v. *Sheriff of Yorks*, 24 Q. B. D. 621; cited p. 242, *infra*.

	£	s.	d.
2. For seizure by the sheriff's officer. For each building or place separately rated at which a seizure is made	1	1	0
3. For mileage: to include the mileage of the bailiff or the man in possession, per mile from the sheriff's officer's residence . .	0	1	0

The foregoing fees, numbered 1, 2, and 3, shall be paid by the execution creditor, and shall not be recoverable by him although the execution proves abortive.

4. For man in possession, per day . . . To provide his own board in every case.	0	5	0

[*Note.*—In the absence of the debtor's consent to the sheriff remaining in possession, possession money will not be allowed against the debtor for a time beyond that reasonably necessary for the purpose of sale. Where the taxing master held that ten days was a reasonable time, the Court refused to increase the allowance (*Ex p. Sheriff of Essex, Re Finch*, 65 L. T. 466). Where both execution creditor and debtor requested the sheriff to remain for a prolonged time, and the debtor afterwards became bankrupt, the sheriff was held entitled to his full costs down to the receiving order (*Re Hurley*, 41 W. R. 653; followed in *Re Beeston*, (1899) 1 Q. B. 626).

Where a receiving order had been made and delivery of the goods was demanded by the official receiver, and the sheriff nevertheless remained in possession because interpleader proceedings were pending, it was held that he was not entitled as against the official receiver or trustee in bankruptcy, to possession money after the demand of the official receiver (*Re Harrison*, (1893) 2 Q. B. 111). Nor is the sheriff, in similar circumstances, entitled to any poundage (*Re Thomas, Ex parte Trustee*, (1899) 1 Q. B. 66, 460)].

5. For removal of goods or animals to a place of safe keeping, when necessary, the actual cost.

6. When goods or animals are removed, for warehousing and taking charge of the same (including feeding of animals) 2½ per cent. on the value of the goods or animals removed, or the sum endorsed on the writ of execution, whichever is the less. No fees for keeping possession of the goods or animals to be charged after the goods or animals have been removed.

7. For the inventory and valuation, cataloguing, lotting, and preparing for sale, when no sale takes place by reason of the execution being withdrawn, satisfied, or stopped, 2½ per cent. on the value of the goods.

[*Note.*—Where a ship was seized and was advertised for sale, and the court restrained the sale, the sheriff claimed hereunder 2½ per cent. on the value of the ship. It was held that this provision was not intended

to apply to such a subject-matter as a ship. *Cohen* v. *De las Rivas*, 64 L. T. 661.]

8. For advertising and giving publicity to the sale by auction, the sum actually and necessarily paid.
9. For commission to the auctioneer on a sale by auction, 7½ per cent. on the sum realised, not exceeding £100, 5 per cent. on the next £200, 4 per cent. on the next £200 ; and on any sum exceeding in all £500 3 per cent. up to £1,000, and 2½ per cent. on any sum exceeding £1,000.
10. For any sale by private contract, half the percentage allowed on a sale by auction.
11. Sheriff's poundage and the fee for delivery of the writ to the under-sheriff shall be the same as before the making of this order.

["**Poundage.**"—One shilling in the pound for the first £100, and sixpence in the pound for every pound above £100 "that he shall levy, or extend and deliver in execution ;" see 28 Eliz. c. 4, 3 Geo. I. c. 15, s. 16, and Edwards on "Execution," p. 156.]

The foregoing fees, numbered 2, 3, 4, 5, 6, 8, 9, 10, 11, shall be levied in every case in which an execution is completed by sale, as fees payable to sheriffs were levied before the making of this order. In every case where an execution is withdrawn, satisfied, or stopped, the fees under this order shall be paid by the person issuing the execution, or the person at whose instance the sale is stopped, as the case may be ; and the amount of any costs and charges payable under this scale shall be taxed by a master of the Supreme Court or District Registrar of the High Court (as the case may be), in case the sheriff and the party liable to pay such costs and charges differ as to the amount thereof.

"**In Case the Sheriff, &c. * * * differ.**"—There is no appeal from the finding of a taxing-master or district registrar as to the amount of fees the sheriff is entitled to on taxation (*Townend* v. *Sheriff of Yorks*, 24 Q. B., D. 621) ; but appeal lies from the refusal of the master or district registrar to tax, where by so doing he disallows a claim under a particular head altogether. So where fees for poundage were disallowed the Court sent the claim back for taxation (*Madeley* v. *Greenwood*, 42 Sol. J. 34).

As to recovery from sheriff of overcharges, see *Woolford's Trustee* v. *Levy*, 7 Times Rep. 598.

"**Execution is withdrawn.**"—As to poundage, &c., in such a case, see *Lee* v. *Dangar*, (1892) 1 Q. B. 231 ; 2 Q. B. 337 ; *Madeley* v. *Greenwood*, 42 Sol. J. 34, *supra ;* as to bailiff's fee and expenses, see *Pirie* v. *Stewart*, (1899) 2 I. R. 546.

Accidental Overcharge for Poundage.—Where by a *bonâ fide* accident the sheriff overcharged for poundage he was held not liable to the penalty under sec. 29 of the Sheriffs Act, 1887 (*Shoppee* v. *Nathan & Co.*, (1892) 1 Q. B. 245. And see *Lee* v. *Dangar*, *supra*). And where the bailiff omitted to except from seizure bedding, &c., to the value of £5 as prescribed by 8 & 9 Vict. c. 127, s. 8, it was held that his mistake did not render the sheriff liable to the penalty under the Sheriffs Act, 1887, s. 29 (*Bagge* v. *Whitehead* (1892), 2 Q. B. 355. See also *Woolford's Trustee* v. *Levy*, (1892) 1 Q. B. 772).

SHERIFF'S FEES.

Under 1 *Vict. c.* 55.

[*Note.*—The fees in the preceding Table relate only to Writs of *Fieri Facias*. By the Sheriffs Act. 1887, sec. 39, sub-s. 5, it is provided that, "Any fees or poundage authorized to be taken by or in pursuance of any enactment hereby repealed may continue to be taken until altered in pursuance of this Act."

The following fees, therefore, remain in force except so far as they are superseded by those set forth in the Table under the Sheriffs Act, *supra*. See Mather on "Sheriff Law," p. 507; Edwards on "Execution," p. 471.]

TABLE.

[These fees can only be levied where the sum recovered can be levied.]

For every Warrant which shall be granted by the Sheriff to his Officers upon any Writ or Process.

	£	*s.*	*d.*
In London and Middlesex	0	2	6
And on Crown and outlawry process an additional	0	2	6
In all other counties where the most distant part of the county shall not exceed 100 miles from London	0	5	0
Not exceeding 200 miles	0	6	0
Exceeding 200 miles	0	7	0
For an arrest in London	0	10	6
In Middlesex not exceeding a mile from the General Post Office	0	10	6
Not exceeding seven miles from the same place	1	1	0
In other counties not exceeding a mile from the officer's residence	0	10	6
Not exceeding seven miles	1	1	0
Exceeding seven miles	1	11	6
For conveying the defendant to gaol from the place of arrest, per mile	0	1	0
For undertaking to give a bail bond	0	10	6

For a Bail Bond.

If the debt shall not exceed £50	0	10	6
„ „ „ £100	1	1	0
„ „ „ £150	1	11	6
„ „ „ £300	2	2	0
„ „ „ £400	3	3	0
„ „ „ £500	4	4	0

	£	s.	d.
If it shall exceed £500	5	5	0
For receiving money under the statute upon deposit for arrest, and paying the same into court if in London or Middlesex	0	6	8
If in any other county	0	10	0

For Filing the Bail Bond.

If the arrest be made in London or Middlesex	0	2	0
If in any other county	0	10	0

Assignment of Bail or other Bond.

If in London or Middlesex	0	5	0
If in any other county (including postage)	0	7	6
For the return to any writ of habeas corpus, if one action	0	12	0
And for each action after the first	0	2	6
For the bailiff to conduct prisoners to gaol, per diem	0	10	6
And travelling expenses per mile	0	1	0
For searching offices for detainer	0	1	0
Bailiff's messenger for that purpose	0	2	6
To the bailiffs for executing warrants on extent, . . . *ne exeat* . . . attachment, elegit, writ of possession, forfeited recognizance, and other like matters, for each, if the distance from the sheriff's office or the bailiff's residence do not exceed five miles	1	1	0
If beyond that distance, per mile	0	0	6
On distringas in London	0	5	0
In Middlesex, not exceeding five miles from the General Post Office	0	5	0
Exceeding five miles	0	10	0
For each man left in possession, when absolutely necessary—			
If boarded per diem	0	3	6
If not boarded per diem	0	5	0
For every sale by auction, notwithstanding the defendant should become bankrupt or insolvent, where the property sold does not produce more than £300, 5 per cent.; £400, 4 per cent.; £500, 3 per cent.; and where it exceeds £500, 2½ per cent.			
For the certificate of sale to save auction duty	0	2	6
Bond of indemnity besides stamp	1	10	0
Certificate of execution having issued for record	0	5	0

On Writs of Trial and Inquiry.

	£	s.	d.
For a deputation	1	1	0
On lodging writ for entering cause and warrant for summoning jury, which fee shall be forfeited in case of countermand of trial	0	4	0

On Trial or Inquisition.

Sheriff for presiding	1	1	0
Bailiff for summoning jury and attendance in court	0	4	0
And if not held at the office of the under sheriff—			
For hire of room if actually paid, not exceeding	0	10	0
For travelling expenses of under sheriff from his office to place where trial or inquisition held, per mile	0	1	0
To the bailiff from his residence, per mile	0	0	6
In all cases where it shall appear to the master that a saving of expense has accrued to the parties by reason of writ of trial having been executed by deputation, the fee for such deputation shall be allowed.			

On Writs of Extent, Elegit, and others of like Nature.

For summoning jury, use of room, presiding at the inquisition, &c.	2	2	0
Jury	0	12	0
For travelling expenses of under sheriff from his office to place of inquisition, per mile	0	1	0
For drawing and engrossing the inquisition, per folio	0	1	6
For summons for the attendance of a witness	0	5	0

In Replevin.

Bond upon the same scale as the bail bond.			
Precept to bailiff	0	2	6
Notice for service on defendant	0	2	6
Broker, where the sum demanded and due shall exceed £20, and shall not exceed £50, for appraisement and affidavit of value	0	10	6
Where it shall exceed £50	1	1	0
And his travelling expenses from his residence to where the goods are, per mile	0	0	6
Bailiff for summoning parties and delivering goods to tenant	1	1	0
And his travelling expenses as a broker.			

	£	s.	d.
For the warrant, record, and return of a *re. fa. lo.*, *accedas ad curiam pone*, or writ of false judgment	0	16	6
For writ of *retorno habendo*	0	4	6
For each summons on a writ of *sc. fa.* or for service of writ of *capias* where no arrest	0	5	0
And mileage per mile	0	1	0
For recording each demand or proclamation under writs of outlawry	0	2	0
For bailiff for making each demand or proclamation on writs of outlawry in London and Middlesex	0	2	6
In other counties	0	5	0
And travelling expenses if the distance shall exceed five miles, then for every mile beyond that distance	0	0	6
For any *supersedeas*, writ of error, order, *liberati*, or discharge to any writ or process, or for the release of any defendant in custody (unless in the prison of the county) or of any goods taken in execution	0	4	6
For the return of any writ or process and filing same, exclusive of the fee paid on filing	0	1	0
For any duty not herein provided for, such sum as one of the masters of the Courts of King's Bench or Exchequer, or one of the prothonotaries of the Court of Common Pleas may upon special application allow.			

The following additional fees were prescribed by *Reg. Gen.*, Trinity Term, 1864 :—

By sheriff for attending in Court on the trial of every common law jury cause or issue, from the party who entered the same for trial, the sum of	0	10	6
For attending the Court on the trial of every cause or issue tried by a special jury summoned by precept under the 108 section of the C. L. P. Act, 1852, from the party at whose instance the same was so tried, the sum of	1	1	0

PART III.

PAY OFFICE STATUTES AND RULES.

COURT OF CHANCERY (FUNDS) ACT, 1872.

(35 & 36 VICT. C. 44.)

An Act to abolish the office of the Accountant-General of the High Court of Chancery in England, and to amend the law respecting the investment of money paid into that Court, and the security and management of the moneys and effects of the suitors thereof.

[August 6th, 1872.]

s. 1.

WHEREAS it is expedient to abolish the office of the Accountant-General of the High Court of Chancery in England, and to make provision respecting the transaction of the business of the office of the said Accountant-General, and the securing on the Consolidated Fund and managing the moneys, effects, and securities of the suitors of the said court:

And whereas the commissioners acting under a commission issued by her Majesty to inquire amongst other matters into the provisions for the custody and management of the stocks and funds of the Court of Chancery of England, and to suggest improvements therein, by their report, dated the seventeenth of February one thousand eight hundred and sixty-four, reported that it was expedient to establish a deposit account for suitors' moneys in the Court of Chancery, and to allow to the suitors interest at the rate of two per cent. per annum upon the moneys belonging to them whilst in the custody of the court, but without depriving them of the right to require the investment thereof at any time on their own behalf and at their own risk:

And whereas it is expedient to provide for the establishment of such deposit account:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

Preliminary.

1. This Act may be cited as "The Court of Chancery (Funds) Act, 1872." Short title.

ss. 2, 3

Commencement of Act

2. This Act shall, save as regards the making of rules and general orders as hereinafter mentioned, come into operation upon a day to be fixed by a rule to be made under this Act in that behalf, which day is hereinafter referred to as the commencement of this Act, and as to the making of any rules and general orders thereunder this Act shall come into operation on the day of the passing thereof.

The 7th of January, 1873, was fixed for the commencement of this Act.

Definitions.

3. In this Act—

The term "The Treasury" means the Commissioners of her Majesty's Treasury for the time being, or any two or more of them:

The term "Court of Chancery" means the High Court of Chancery of England, and includes the Lord Chancellor and any other judge intrusted with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind:

The term "order of the Court of Chancery" means such order, decree, report, certificate, or direction of the Court of Chancery as defined by this Act, or any judge or officer thereof, as may be prescribed by a rule made under this Act:

The term "general order of the Court of Chancery" means a general order made by the Lord Chancellor, either alone or with the assistance of other judges, and either in Chancery or in Lunacy:

The term "person" includes a body corporate and company:

The term "dividends" includes interest or other periodical produce:

The term "Government securities" means any annuities, exchequer bonds, exchequer bills, and other parliamentary securities of the Government of the United Kingdom:

The term "securities" includes Government securities, and any security of any foreign State, any part of her Majesty's dominions out of the United Kingdom, or any body corporate or company, or standing in books kept by any body corporate, company, or person in the United Kingdom, and all stock, funds and effects:

See *Re Gledstane's Trusts*, W. N. (78) 26; and see S. C. F. R. 1894, r. 3, "Funds in Court," *post*.

The term "securities in court" means any securities as defined by this Act standing or deposited in the name or to the credit or account of the Accountant-General of the Court of Chancery or of the Paymaster-General on behalf of the Court of Chancery, or placed to the credit of a cause, matter, or account in that court:

The term "money in court" means any sum of money paid into the Bank of England with the privity of the Accountant-General of the Court of Chancery or of the Paymaster-General on behalf of the Court of Chancery, or placed to the credit of any cause, matter, or account in the Court of Chancery, and includes dividends on securities in court and interest on money on deposit.

Accountant-General's Office.

Performance of duties of Accountant-General by Paymaster-General.

4. On the commencement of this Act * * * her Majesty's Paymaster-General (in this Act referred to as the Paymaster-General) for the time being shall perform all the duties and exercise all the powers and authorities which before the commencement of this Act were performed by or vested in or capable of being exercised by the Accountant-General of the Court of Chancery: Provided that nothing in this Act shall render the Paymaster-General incapable of being elected to or sitting or voting in the House of Commons, or cause a member of the House of Commons upon becoming Paymaster-General to vacate his seat.

The Paymaster-General may do any act, sign or execute any instrument, and exercise any authority required or authorised to be done, signed, executed, or exercised by him for the purposes of this Act, or any rule made thereunder, by a deputy or deputies appointed by him in writing under his hand.

The part omitted was repealed by 46 & 47 Vict. c. 39.
See now the S. C. J. Funds Act, 1883, s. 2, *post*.

Liability of Consolidated Fund for default of Paymaster-General.

5. The Consolidated Fund of the United Kingdom shall be liable to make good to the suitors of the Court of Chancery all money in court and all securities in court, whether the same have been paid, transferred, or deposited into or in court before or after the commencement of this Act, and all money and securities vested in the Paymaster-General for the time being by or in pursuance of this Act; and if the Lord Chancellor, either with or without a representation made to him by any suitor of the Court of Chancery, certifies to the Treasury in writing that the Paymaster-General has failed to pay any money in court, or transfer or deliver any securities in court, required by any order of the Court of Chancery to be paid, transferred, or delivered from his account, or has been guilty of any default with respect to such money or securities, the Treasury shall cause to be paid out of the growing produce of the Consolidated Fund into the Bank of England, to the credit of the Paymaster-General for the time being on behalf of the Court of Chancery, such sum of money as may be certified by the Lord Chancellor in writing to be required to pay the money so required to be paid, or to replace the securities so required to be transferred or delivered or make good such default.

For the practice as to obtaining payment to the person rightly entitled of a fund paid out to a person not entitled thereto, see *Slater* v. *Slater*, 58 L. T. 149; and see *Marsh* v. *Joseph*, (1897) 1 Ch. 213.

Construction of Acts, &c., referring to Accountant-General.

6. Where under any Act (whether passed before or after the commencement of this Act), or otherwise, any money or securities would, if this Act had not passed, be capable of being paid, transferred, or deposited to or into or in the name of or to the account or credit of or with the privity of the Accountant-General of the Court of Chancery, or the Accountant-General of the Court of Exchequer, or to or into or in the Court of Chancery, the same shall after the commencement of this Act be paid, transferred, or deposited to the credit or account of or with the privity of the Paymaster-General for the time being on behalf of the Court of Chancery, and

ss. 6—10.

shall be subject to the like trusts, orders, directions, powers, and provisions as if he were the Accountant-General of the Court of Chancery or Court of Exchequer, as the case may be, and the orders of the Court of Chancery relating thereto shall have the same effect as the like orders of the Court of Chancery or Court of Exchequer would have had if this Act had not passed.

All Acts of Parliament, all rules and orders made in pursuance of any Act of Parliament, all general orders of the Court of Chancery, all orders of the Court of Chancery, and all instruments and proceedings of every description referring to the Accountant-General of the Court of Chancery or Court of Exchequer, shall, subject to the provisions of this Act and of any rule made thereunder, be construed and put into execution as if the Paymaster-General for the time being were therein named or referred to in place of such Accountant-General, so however that all money and securities shall be paid, transferred, or deposited to the credit or account of the Paymaster-General for the time being on behalf of the Court of Chancery, and not into the name of the person who is such Paymaster-General.

Provided that nothing in this section shall affect the Queen's Remembrancer, or the performance by him of any duties formerly performed by the Accountant-General of the Court of Exchequer, or apply to any act, rule, order, instrument, or proceeding relating to such duties.

Framing of orders.

7. All general orders of the Court of Chancery, and all orders of the Court of Chancery, and all instruments and proceedings relative to business of the Court of Chancery to be transacted by the Paymaster-General in pursuance of this Act (in this Act referred to as Chancery business) shall, after the commencement of this Act, be framed and expressed in such manner as may be necessary for carrying the provisions of this Act with respect to the Accountant-General and Paymaster-General into effect.

Office of Paymaster-General for Chancery business.

8. The Treasury shall cause the Paymaster-General to keep, in the neighbourhood of the place where the Court of Chancery ordinarily holds its sittings, an office for the purpose of carrying on Chancery business, and for making for the purpose of Chancery business payments of small amounts in cash, and shall from time to time provide such clerks and officers as are necessary for conducting such business and making such payments.

Vesting of property in Paymaster-General for time being.

9. All securities and money vested in the Paymaster-General in pursuance of this Act shall vest in the Paymaster-General for the time being on behalf of the Court of Chancery without any conveyance, assignment, or transfer, notwithstanding the death or removal from office of the person who is Paymaster-General, and shall be held by him in trust to attend the orders of the Court of Chancery, and all acts done by the Paymaster-General with reference to such securities and money in pursuance of an order of the Court of Chancery shall be valid and effectual.

Transfer of securities and receipt of dividends.

10. All securities from time to time transferred, standing, or deposited into, in, or to the account of the Paymaster-General in pursuance of this Act, shall be held by the Paymaster-General in

trust in the several causes and matters in which such securities are transferred, standing, or deposited respectively, and shall not be transferred, sold, or delivered out except in pursuance of an order of the Court of Chancery, but the certificate of a registrar of the Court of Chancery or of a master or registrar in lunacy countersigned by the Paymaster-General shall be sufficient evidence of the order referred to in the certificate, and of the directions contained in such order, and shall be a necessary and sufficient authority to the Governor and Company of the Bank of England and every person for transferring on sale or otherwise or delivering out any securities standing in the books of or deposited with such bank or person to the credit or account of the Paymaster-General for the time being on behalf of the Court of Chancery, and the securities directed by any such certificate to be transferred or delivered out shall be transferred or delivered out accordingly on behalf of the Paymaster-General by some officer of such bank or person.

The Governor and Company of the Bank of England shall, by one of their cashiers or some other proper officer, from time to time receive all dividends accruing due on all securities which are standing to the account of the Paymaster-General for the time being on behalf of the Court of Chancery, of which a certificate has been sent to them by the Paymaster-General, and shall also receive any principal money payable in respect of any of such securities, and the said certificate shall be a sufficient authority to them to receive such dividends and principal money; and any receipt given by the said Governor and Company, or one of their cashiers or other proper officer, for any dividends on any securities standing to the said account, or any principal money payable in respect of any such securities, shall be a good discharge for the same; and the said Governor and Company shall place all money received by them in pursuance of this section to the credit of the Paymaster-General for the time being, on behalf of the Court of Chancery.

See S. C. F. A. 1883, s. 7, *post*, amending this section.

[Section 11 applies 16 & 17 Vict. c. 59, s. 19 (relating to the indorsement of cheques), to cheques, &c., issued by the Paymaster-General; and section 12 applies the provisions of 24 & 25 Vict. c. 98, which relate to the forging or altering of instruments made by the Accountant-General (see s. 33), to instruments made, signed, or countersigned by the Paymaster-General or any deputy or officer.]

Indemnity to Bank of England.

13. Nothing in this Act shall be deemed to require the Governor and Company of the Bank of England to keep the account of the Paymaster-General on behalf of the Court of Chancery causewise, and the Governor and Company of the Bank of England are hereby indemnified for all acts and things done or permitted to be done in pursuance of this Act, or of any rule purporting to be made thereunder, or of any order of the Court of Chancery made or purporting to be made in pursuance of this Act or of any such rule, or done or permitted to be done in pursuance of any certificate signed and countersigned as directed by this Act, and such acts and things respectively shall not be questioned or impeached in any court of law or equity to the detriment of such Governor and Company.

ss. 14—19.

Deposit Account.

Establishment of suitors' deposit account.

14. Save as otherwise provided by any rule made under this Act, all money in court paid in either before or after the commencement of this Act shall, subject to the provisions of this Act and of any rule made thereunder, be placed on deposit, and in the case of money in court paid in after the commencement of this Act without any application or request for that purpose, and when so placed on deposit shall bear interest at the rate of two per cent. per annum together with any income-tax chargeable thereon.

Any money which may at any time be standing to the credit of the Paymaster-General on behalf of the Court of Chancery beyond the amount which the Paymaster-General considers to be required for meeting current demands shall be placed in the hands of the Commissioners for the Reduction of the National Debt, who shall from time to time pay to the credit of the Paymaster General on behalf of the Court of Chancery such sum as, with the money to the like credit, may be certified by him to be required to meet current demands, and the Consolidated Fund of the United Kingdom shall be liable to make good all money so placed in the hands of the Commissioners for the Reduction of the National Debt, and the interest payable on sums placed on deposit, in like manner as it is liable to make good money in court.

As to money on deposit, see S. C. F. R., 1894, rr. 76—85, *post*.

Saving for investments made under order of Court.

15. Any money in court paid in either before or after the commencement of this Act which under any general order of the Court of Chancery or rule under this Act, or under an order of the Court of Chancery, is required to be laid out in any particular investment, shall, subject to any rule made under this Act, be so laid out notwithstanding anything in this Act.

[Section 16, which provided for the conversion of securities in court into cash, and the transfer of the proceeds, was repealed by the J. A. 1875, s. 30; which provided that rules may be made for the conversion of securities into cash and *vice versâ*. See now S. C. F. R. 1894, rr. 86—93, *post*.]

[Section 17 provided as to the application of money placed in the hands of the Commissioners for the Reduction of the National Debt. See the S. C. F. R. 1894, rr. 91—93, *post*.]

Rules and Accounts.

Rules for regulating proceedings.

[Section 18 provides that the Lord Chancellor, with the concurrence of the Treasury, may from time to time make rules for carrying the Act into effect, and regulating the deposit, payment, delivery, and transfer in, into, and out of the Court of Chancery of money and securities, and the investment of and other dealing with money and securities in court, &c. &c.; and provides that "Every rule purporting to be made in pursuance of this section shall come into operation at the date of such rule or any later date therein in that behalf mentioned, and have effect as if it were enacted in this Act." See now the S. C. Funds Rules, 1894, *post*.]

[Section 19 provided for the making of general orders for regulating the procedure and practice of the Court of Chancery for carrying into effect the Act and any rules made thereunder, and for the laying before Parliament of rules and orders made in pursuance of the Act.]

ss. 20—26.

[Section 20 provides as to the keeping of accounts by the Treasury and having them audited.]

[Section 21 related to the transfer of land and buildings vested in the Accountant-General.]

[Section 22 is repealed by 46 & 47 Vict. c. 39; section 23 provided for the transfer of the clerks and officers attached to his office to the office of the Paymaster-General; and section 24 for the transfer of securities, books, and other property to the Paymaster-General, and for the alteration of accounts at the Bank of England.]

[Section 25 contains provisions as to certain slave compensation funds then standing in the name of the Accountant-General.]

Repeal.

Repeal of Acts.

26. The Acts specified in the first part of Schedule Two to this Act are hereby repealed; and the Acts specified in the second part of the same schedule are hereby repealed to the extent in the third column in that part of the schedule mentioned.

Provided that this repeal shall not—

(1.) Affect anything done or suffered before the commencement of this Act, or any right acquired or accrued before the commencement of this Act, or any order made before the commencement of this Act, under the said Acts or any of them, or revive any office or right thereby abolished; or,

(2.) Affect the title to, or estate in, any land purchased in pursuance of the said Acts or any of them, or the application of any compensation money paid in respect of such land, or any easements or privileges, or payable under the Acts mentioned in Schedule One to this Act; or,

(3.) Affect the right of any person to receive or obtain such salary, compensation, retiring annuity, pension, superannuation allowance, or emolument as he might have received or obtained if this Act had not passed, or the duty of any person to perform, if required, the same acts or duties as he might have been required to perform if this Act had not passed.

The first paragraph and sub-section 1 of this proviso are repealed by 46 & 47 Vict. c. 39.

SCHEDULES.

Schedules.

SCHEDULE ONE.

[This schedule enumerates certain Acts relating to slave compensation which were referred to in s. 25.]

SCHEDULE TWO.

(Repealed, 46 & 47 Vict. c. 39.)

SUPREME COURT OF JUDICATURE (FUNDS, &c.) ACT, 1883.

(46 & 47 VICT. c. 29.)

An Act to consolidate the Accounting Departments of the Supreme Court of Judicature, and for other purposes.

[20th August, 1883.]

ss. 1—3.

WHEREAS it is expedient that there should be but one accounting department for the Supreme Court of Judicature and all the courts and divisions thereof, and it is further expedient to amend certain provisions of the Chancery Funds Act, 1872, and to provide for facilitating the business of the said department:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Pay office of the Supreme Court.

1. From and after the commencement of this Act there shall be one accounting department for the Supreme Court of Judicature.

Funds in Chancery Division.

2. All securities and money at the time of the commencement of this Act vested in the Paymaster-General in pursuance of the Chancery Funds Act, 1872, and all securities and money at any time after the commencement of this Act transferred or paid into or deposited in court, to the credit of any cause, matter, or account in the Chancery Division of the High Court of Justice, shall be vested in Her Majesty's Paymaster-General for and on behalf of the Supreme Court of Judicature, and shall continue to be and be subject to all the provisions of the Chancery Funds Act, 1872, and to the rules heretofore made and now in force under that Act, subject to such alterations therein and to such other and further rules as shall from time to time be made as thereby provided.

See, as to the Paymaster-General, the Chancery Funds Act, 1872, ss. 4—13, *ante;* and see the S. C. F. R. 1894, *post.*

Funds in other divisions.

3. (*a.*) The Lord Chancellor, with the concurrence of the Treasury, may at any time after the passing of this Act direct that all moneys in court, or to be hereafter paid into court, in any other division of the High Court of Justice, and all securities in court placed or to be placed to the credit of any cause, matter, or account, in any such division, shall be transferred, or paid, or placed (as the case may be) to the account or credit of the Paymaster-General for and on behalf of the Supreme Court of Judicature.

Orders of the 15th February, 1884.

(*b.*) All moneys and securities transferred, paid, or placed to the said account or credit of the Paymaster-General under this section shall be held by the Paymaster-General for the time being in trust to attend the orders of the court in regard thereto, and subject to rules to be made under this Act.

(*c.*) The Consolidated Fund shall be liable to make good to the suitors of the court the moneys and securities so transferred, paid, or placed to the account or credit of the Paymaster-General.

Power to make rules.

4. (1.) The Lord Chancellor, with the concurrence of the Treasury, may from time to time make rules for giving effect to the provisions of the last preceding section, and for regulating the manner in which, subject to the orders of the court, the said moneys and securities shall be dealt with by the Paymaster-General, and may at any time revoke or alter any such rules.

See the S. C. F. R. 1894, *post*.

(2.) The Treasury shall cause to be kept by the Paymaster-General such books and accounts, and in such form and manner, as they may from time to time direct, for the purpose of duly recording the transactions under the last preceding section; and the accounts kept by the Paymaster-General in respect of such transactions shall be audited by the Comptroller and Auditor-General in the manner and subject to the conditions prescribed in section twenty of the Chancery Funds Act, 1872.

Validity of payments, &c., pursuant to rules of court.

5. All acts done by the Paymaster-General with reference to money and securities in court (whether such money and securities be paid, transferred, or delivered into court under this Act or under the provisions of the Chancery Funds Act, 1872), pursuant to and in accordance with the provisions of any general rules of the Supreme Court of Judicature made under the provisions of the Supreme Court of Judicature Act, 1875, and Acts amending the same, shall be as valid and effectual as if they had been done in pursuance of an order of the High Court of Justice or of the Court of Appeal.

Remittances by post.

6. If under any rules made by the Lord Chancellor with the concurrence of the Treasury, or any regulations of the Treasury, the Paymaster-General be authorised to make payments of money to persons entitled thereto upon their request by transmitting by post to such persons crossed cheques or other documents intended to enable such persons to obtain payment of the sums expressed therein, the posting of a letter containing such cheque or document, and addressed to any such person entitled thereto at the address given by him in his request, shall, as respects the liability of the Paymaster-General and of the Consolidated Fund respectively, be equivalent to the delivery of such cheque or document to such person himself.

See S. C. F. R. 1894, r. 48, *post*.

Amendment of 35 & 36 Vict. c. 44, s. 10.

7. Any rules made by the Lord Chancellor with the concurrence of the Treasury under the provisions of the Chancery Funds Act, 1872, or this Act, may determine what evidence of an order of the High Court of Justice or Court of Appeal, and of the directions contained in such order, shall be necessary or sufficient, or necessary and sufficient to authorise the Governor and Company of the Bank of England or any other person to transfer on sale or otherwise, or to deliver out, any securities or other things standing in the books of or deposited with such bank or person to the credit or account of the said Paymaster-General for the time being under this or the aforesaid Act; and such securities or things shall be transferred or delivered out accordingly, on behalf of the Paymaster-General, by some officer of such bank or person, anything in section ten of the Chancery Funds Act, 1872, to the contrary thereof notwithstanding.

Short title.

8. This Act may be cited as the Supreme Court of Judicature (Funds, &c.) Act, 1883.

SUPREME COURT FUNDS RULES, 1894.

ARRANGEMENT OF RULES.

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APPENDIX.

N.B.—These rules supersede, but are mostly a reprint of, the S. C. F. Rules, 1886. They incorporate the provisions of the Supreme Court (District Registry) Funds Rules, 1887, the Supreme Court Funds Rules, 1888, and the Supreme Court Funds Rules, 1893. The above-mentioned Rules are therefore not reprinted in this edition.

I, the Right Honourable Farrer, Baron Herschell, Lord High Chancellor of Great Britain, with the concurrence of the Lords Commissioners of Her Majesty's Treasury, do hereby, in pursuance of the powers contained in "The Court of Chancery Funds Act, 1872," "The Supreme Court of Judicature Act, 1875," "The Supreme Court of Judicature (Funds, &c.) Act, 1883," "The Supreme Court of Judicature (Procedure) Act, 1894," and of every other power enabling me in that behalf, make the following rules :—

See Chancery Funds Act, 1872, s. 18; J. A. 1875, ss. 17, 30; J. A. 1894, s. 6, *post*; J. F. Act, 1883, s. 4, *ante*.

rr. 1, 2.

I. OPERATION OF RULES AND INTERPRETATION OF TERMS.

Commencement of rules and short title.

1. These rules shall come into operation on the 1st day of January, 1895, and may be cited as "The Supreme Court Funds Rules, 1894."

2. All other rules or general orders prescribing the mode of dealing with funds in court, and containing any provisions relating to funds in court

inconsistent with these rules, are hereby revoked and these rules substituted therefor, as from the same day:—Provided that the rules hereby revoked shall continue to apply to orders made but not fully acted upon before these rules come into operation, so far as is indispensable for the purpose of duly giving effect to such orders.

Repeal of existing rules.

Prior to the commencement of the S. C. F. R. 1884, for which the rules of 1886 were substituted, the principal rules and orders which regulated funds in court were, in Chancery, the Chancery Funds Consolidated Rules of 1874 (made under the Chancery Funds Act, 1872), and the Chancery Funds Amended Orders of 1874 (made under the Chancery Funds Act, 1872, and the Trustee Relief Act, 1847); in the Queen's Bench, the provisions in the R. S. C. 1883, O. 22, and Appendix M.; in Admiralty, the Admiralty Rules of 1859 and the provisions of the R. S. C. 1883, O. 22, rr. 20—21; and in Probate, the Rules and Orders of the Court of Probate; all of which rules, orders, and provisions are (with the exception of the Chancery Funds Consolidated Rules of 1874, which were expressly repealed *in toto* by the S. C. F. R. 1884, rule 2) only repealed so far as they are inconsistent with these rules. The Chancery Funds Amended Orders, 1874, were repealed by R. S. C., 25 Feb., 1895.

Interpretation of terms.

3. In these rules and in orders as herein prescribed and defined terms shall have the same meaning as the same terms are defined to have in the Rules of the Supreme Court, 1883, and the following words shall have the several meanings hereby assigned to them, viz.:—

"Paymaster" means Her Majesty's Paymaster-General for the time being for and on behalf of the Supreme Court of Judicature, or the Assistant Paymaster-General for Supreme Court business for the time being deputed by the Paymaster-General to act on his behalf for such business:

"Pay office" means the Paymaster-General's office for business of the Supreme Court of Judicature:

"Pay office account" means the account of the Paymaster-General for the time being for and on behalf of the Supreme Court of Judicature:

"Audit office" means the office of the Comptroller and Auditor-General in which the audit of the accounts of the Pay Office is conducted:

"Bank" means the Bank of England, or the Governor and Company of the Bank of England, and includes for District Registry purposes the branch banks of the Bank of England in Liverpool and Manchester:

The provisions relating to Liverpool and Manchester district registries are new (1894). They give effect to the provisions of S. C. F. R. 1887, r. 4.

"Company" includes corporation or body corporate:

"Person" includes a firm:

"Government securities" means New Consols, or 2¾*l.* per centum Annuities, or 2½*l.* per centum Annuities, or Local Loans Stock:

"Funds" or "funds in court" means any money, Government stock or annuities, or other securities, or any part thereof standing or to be placed to the Pay Office Account in the books of the Bank of England or of any other company, and includes boxes and other effects:

"Lodge in court" means pay or transfer into court, or deposit in court:

r. 3.

"Lodgment in court" means payment or transfer into court, or deposit in court:

"Title of the cause or matter" means the short title of the cause or matter, with the reference to the record:

"Ledger credit" means the title of the cause or matter and the separate account (if any) opened or to be opened under an order or otherwise, in the books of the Paymaster, to which any funds are credited or to be credited:

"Order" means an Order of the Supreme Court of Judicature or of the High Court of Justice or Court of Appeal, whether made in court or in chambers, and an Order in Lunacy, and includes a judgment or decree, and a report of a Master in Lunacy, confirmed by fiat, and thereby receiving the operation of an Order under the Lunacy Regulation Acts for the time being in force, or any general order made thereunder; and a certificate of a Master in Lunacy to be acted on without further Order; and includes the Schedule or Schedules to an Order:

"Direction" means any cheque, draft, or authority issued to the Bank of England, or to any other company, which relates to money or securities standing or to be placed to the Pay Office Account; and includes any authority for the payment of money through the agency of the Post Office:

"Court" means the Supreme Court of Judicature or the High Court of Justice or any Division thereof, or the Court of Appeal:

"Registrar" means a Registrar of the Chancery or of the Probate, Divorce and Admiralty Divisions of the High Court of Justice, and a Registrar in Bankruptcy; also the District Registrars of the Court in Liverpool and Manchester, and includes the officer whose duty it may be under any General Orders in Lunacy for the time being in force to draw up and issue Orders in Lunacy:

Extended by the inclusion of Registrars in Bankruptcy, and the District Registrars of Liverpool and Manchester.

"Chief clerk's certificate" or "certificate of a chief clerk" means a certificate made by a Chief Clerk of the Chancery Division of the Court, or by a District Registrar of the Court in Liverpool or Manchester acting as a Chief Clerk:

Altered by inclusion of the district registrars of Liverpool and Manchester.

Chief Clerk. — The title has recently (1897) been changed to that of "Master of the Supreme Court."

"Taxing officer" means a Taxing Master in the Chancery Division of the Court, and the master or person whose duty it is to tax the costs in the other Divisions or in Lunacy:

This definition is qualified by the subsequent words of this rule, see *infra*. (*Wilson* v. *Alltree*, 27 C. D. 242.)

"National Debt Commissioners" means the Commissioners for the Reduction of the National Debt:

"Statutory declaration" means a declaration under the Statutory Declarations Act, 1835 (5 & 6 Wm. 4, c. 62), subject to the provisions of 44 & 45 Vict. c. 41, s. 68:

In causes and matters proceeding in a District Registry, "Master," "Chief Clerk," and "Taxing officer" mean District Registrar:

Words importing the singular number only include the plural number, and words importing the plural number only include the singular number:

Words importing males include females.

II. PREPARATION OF ORDERS IN THE CHANCERY DIVISION AND IN LUNACY TO BE ACTED UPON BY THE PAYMASTER, AND PARTICULARS RELATING THERETO.

Application of rules 5 to 27 inclusive.

4. The rules next following, numbered severally 5 to 27 inclusive, shall apply only to causes and matters in the Chancery Division, and (so far as the same are applicable) to matters in Lunacy.

The rules in this Part correspond to the rules in Part II. of the Chancery Funds Rules, 1874.

O. 62, r. 16, provides that orders for payment of money into or out of court are to be drawn in conformity with Pay Office Rules.

Order for funds to be brought into court to have lodgment schedule.

5. Every Order which directs funds to be lodged in court, shall have annexed thereto as part thereof a schedule, to be styled the Lodgment Schedule, which shall be headed with the title of the cause or matter, the date of the Order, and the title of the ledger credit to which the funds are to be placed; and shall set out in a tabular form:—

(*a.*) The name, or a sufficiently identifying description of the person by whom the funds are to be lodged:

(*b.*) The amount, if ascertained, and the description of the funds.

The authority for a lodgment of the proceeds of the sale of any property which has been directed by an Order to be sold, and for a lodgment of Receiver's balances, may be a Lodgment Schedule signed by a Chief Clerk; and such Lodgment Schedule shall operate in the same manner as a Lodgment Schedule annexed to an Order.

The Lodgment Schedule shall be prepared upon a printed form according to the Form No. 1 in the Appendix to these Rules, and as nearly as may be in the manner shown by the specimen entries appended to such Form; and may direct the investment and accumulation of the funds or the dividends or interest on the funds to be lodged; and may also direct that the funds shall not be dealt with without notice to the purchaser or other person named in such schedule.

As to lodgment of funds in court, see rr. 29 to 42, *infra*.

Order for funds to be paid out, &c., to have a payment schedule.

6. Every Order which directs funds in court to be paid, sold, transferred, or delivered, or carried over to any other ledger credit than that to which the same are standing, or to be otherwise dealt with by the paymaster, shall have annexed thereto as part thereof a Schedule, to be styled the Payment Schedule, which shall be headed with the title of the cause or matter, the date of the Order, and the ledger credit to which the funds dealt with are standing. The Payment Schedule shall contain as part of the heading a statement of the funds with which, or with part of which, or with the interest or dividends on which the Paymaster is to deal, describing them if already in court as they appear in the Paymaster's certificate, or if not already in court

rr. 6—8.

stating the source from which they are to be derived. The Payment Schedule shall set out in a tabular form :—

(*a.*) The name of each person to whom a payment, transfer, or delivery of any funds is to be made : unless the name is to be stated in a certificate of a chief clerk or a master in lunacy or a taxing officer, or unless such payment, transfer, or delivery is to be made to trustees or other persons in succession, or to representatives when no probate or letters of administration shall have been taken out at the date of the order. The name shall be in full (the christian name preceding the surname) except in the case of a payment to a firm, when the business title of such firm may be stated ; and when a payment is to be made to a person named in the schedule, the address (if known at the time of preparing the schedule) of such person, or in the case of a payment to two or more persons jointly of one of such persons, shall be stated in the schedule :

(*b.*) The title of the ledger credit or separate account to which any funds are to be carried over :

(*c.*) The amount and description of the funds in each case to be paid, sold, transferred, delivered, or carried over, so far as the same can be ascertained at the date of the order, except in the case of aliquot parts of an ascertained amount ; and where the actual amounts to be dealt with cannot be ascertained at the date of the order, and are not to be subsequently ascertained by any means provided for by the order or by these rules, the aliquot parts to be dealt with :

(*d.*) The nature and necessary particulars of any other dealings with such funds by the Paymaster.

In the body of the schedule short descriptions may be used, and it shall not be necessary to add that the specific amounts dealt with form part of the larger amount of any like funds mentioned in the heading. The word "interest" in the schedule shall, unless otherwise specified, mean the dividends and interest on all the funds mentioned in the heading.

The payment schedule shall be prepared upon a printed form according to the Form No. 2 in the Appendix to these rules, and as nearly as may be in the manner shown by the specimen entries appended to such form.

As to payment and transfer of funds out of court, see rr. 44 to 68, *infra*.

When a separate account is opened.

7. When funds in court are by an order directed to be carried over to a separate account, the title of the ledger credit to be opened for the purpose shall, unless the order otherwise directs, commence with the title of the cause or matter to which such funds are standing.

When both a lodgment and payment schedule to be annexed.

8. Every order which both directs or authorises the lodgment of funds in court and also deals with such funds or any part thereof, or with any funds already in court to the same ledger credit, shall have annexed thereto as part thereof a combined lodgment and payment schedule, in the Form No. 3 in the Appendix to these rules.

9. When funds to be lodged in court under an order are by the same order directed to be placed to two or more ledger credits, separate lodgment schedules shall be made out for such respective ledger credits; and when funds standing to two or more ledger credits are dealt with by the same order, separate payment schedules shall be made out for such ledger credits respectively.

Separate schedule for each ledger credit.

10. The lodgment and payment schedules, respectively, shall contain the whole of the instructions intended by the orders of which they severally form part to be acted upon by the paymaster, and all particulars necessary to be known by him, so far as such instructions and particulars are capable of being expressed at the date of the order; and the paymaster shall only be responsible for giving effect to such instructions so intended to be given by the order as are expressed in the lodgment or payment schedule thereto. The instructions and particulars contained in a lodgment or payment schedule shall not be set forth in the body of the order, but shall only be therein referred to as appearing by the schedule, unless for any special cause it shall, in the opinion of the judge by whom the order is made, or the registrar by whom the same is drawn up, be necessary to set forth some part of such instructions or particulars both in the body of the order and in the schedule.

Instructions to paymaster to be solely contained in schedule.

11. When an order directs any sums to be ascertained by the certificate of a chief clerk or taxing officer, or a master in lunacy, or in any other manner, and to be afterwards dealt with by the paymaster, it shall be so expressed in the payment schedule; and such certificate or other authority, or a duplicate or an office copy of the same, or of so much thereof as shall be necessary, shall be sent to the paymaster. Such certificate shall be printed or partly printed, and as nearly as may be in the Form No. 4 appended to these rules.

When sums are to be ascertained by certificate, &c.

The words "taxing officer" in this and the next rule must be read with O. 65, r. 27 (43), so as to include a district registrar when taxation has been before him. (See r. 111, (n.), *infra*.)

12. When an order directs payment out of a fund in court of any costs directed to be taxed by a taxing officer, the taxing officer shall state in his certificate the name and address of the person to whom such costs are payable. Such certificate shall be printed, or partly printed, and as nearly as may be in the Form No. 5 appended to these rules, and a duplicate or an office copy thereof shall be sent to the paymaster.

Certificate for payment of taxed costs.

See r. 11, (n.).

See further as to the taxing officer's certificate, R. S. C., O. 65, r. 27 (35).

13. When interest not directed to be certified is payable in respect of any money in court directed by an order to be dealt with by the paymaster, there shall be stated in the payment schedule the rate per centum at which, and (if the day to which interest is payable can be fixed by the order) the day (inclusive) to which such interest is to be computed, and the amount of such interest.

Interest how ascertained.

This and the four following rules are from C. F. R. 1874, r. 10. As to interest on debts and legacies, see R. S. C., O. 55, rr. 62—64.

14. If the day to which interest is payable cannot be fixed by the order, the day from which (exclusive) such interest is to be computed shall (except in the case of a computation of subsequent interest in the cer-

When the day to which interest is

rr. 14—19.

payable cannot be ascertained.

tificate of a chief clerk, or a master in lunacy) be stated in the payment schedule, and such interest may be directed to be computed and certified by a chief clerk, or a master in lunacy, or (where the computation is dependent upon the taxation of costs) by a taxing officer.

The court or judge may direct any computation of interest to be certified by the master. (R. S. C., O. 55, r. 18.)

When interest certified by a chief clerk, &c.

15. Interest certified by a chief clerk, or a master in lunacy, or a taxing officer, may, unless the order otherwise directs, be computed to a day subsequent to the date of the certificate and to be named therein as the day for payment, so as to allow a reasonable time for doing all necessary acts to enable the payment to be made; and the chief clerk, or master in lunacy, or taxing officer, may, if he thinks fit, require a statement in writing of such computation, authenticated by the signature of the solicitor of the person having the carriage of the order, to be produced before preparing the certificate, but no affidavit verifying such computation shall be required.

When interest to be ascertained by affidavit.

16. When the day for payment is not fixed by the order, and the interest is not directed to be certified as in the last preceding rule mentioned, such interest shall, without any provision in the order for that purpose, be ascertained by an affidavit, or by a statutory declaration, in which case such interest shall be computed to a day (inclusive), to be named in such affidavit or declaration, as the day for payment; which day shall not be more than fourteen days after the day of swearing such affidavit, or making such declaration; and such affidavit or declaration shall be a sufficient authority to the paymaster to pay or apply the amount of interest so ascertained in the manner directed by such order.

The corresponding provision of C. F. R. 1874, r. 10, limited ten days from the swearing of the affidavit.

Deduction of income tax from interest.

17. In every case in which interest is to be computed, income tax (if any) shall, in making such computation, be deducted therefrom at the rate payable during the time such interest accrues, unless the order otherwise directs; and if income tax has been deducted, it shall be so stated in every such affidavit or declaration as is mentioned in the last preceding rule.

When dealings by the Paymaster are made contingent upon the execution of particular documents.

18. Whenever the dealing by the paymaster with funds in court is, by an order, made contingent upon the execution of some document, it shall be so expressed in the payment schedule. The execution of such document shall be certified by a master in lunacy, or by a chief clerk; provided that in the case of a document in existence at the date of the order, and sufficiently identified in the schedule, the execution may be directed to be verified by affidavit. Such certificate or affidavit shall state the particular amount of funds to be dealt with. Such certificate shall be printed, or partly printed, and as nearly as may be in the Form No. 6 appended to these rules.

Periodical payments.

19. When an order directs the payment of dividends, annuities, or other periodical payments, to be made by the paymaster, there shall be stated in the payment schedule (except in the case of dividends payable as they accrue due), the time when the first of such payments and all

subsequent periodical payments, whether quarterly, half-yearly, yearly, or otherwise, are to be made.

This is from C. F. R. 1874, r. 13.

Legacy, estate, and succession duty.

20. When an order directs the payment, transfer, or delivery of funds in court, in respect of which duty shall be payable to the revenue under the Acts relating to legacy or estate or succession duty, and does not direct the payment of such duty, it shall be stated in the payment schedule that such payment, transfer, or delivery is subject to duty, and in such case the paymaster is to have regard to the circumstance that such duty is payable; and when by an order funds in respect of which such duty may be chargeable are directed to be invested, carried over, or placed to a separate account, the words "subject to duty" shall be added in the schedule to the separate account directed to be opened.

This rule is from the first part of C. F. R. 1874, r. 14, the latter part of which is contained in r. 52, *infra*, *q. v.*

Payment, transfer, or delivery to trustees, &c.

21. When a person to whom payment, transfer, or delivery of funds in court is directed is entitled thereto as real estate, or as trustee, executor, or administrator, or otherwise than in his own right or for his own use, the fact that he is entitled to the same as real estate, or the character in which he is so entitled, shall be stated in the payment schedule to the order, or in the certificate of a chief clerk, or of a taxing officer, or of a master in lunacy.

This rule is from the first paragraph of the C. F. R. 1874, r. 53

See also rr. 62, 64, and 65, *infra*.

"**Entitled to the same as Real Estate.**"—The fact that an infant by his solicitor or counsel requests a sale of real estate in a partition action does not operate as an election by the infant to take it as personalty. In such case the fund to be carried over to the account of the infant must be stated to be real estate (*Howard* v. *Jalland*, 92 L. T. Jo. 146).

Draft schedule to be prepared by party having conduct of proceedings.

22. When an order is made dealing in any way with funds in court or to be brought into court in accordance with minutes agreed upon by the parties, the solicitor of the party whose duty it is to procure the order to be drawn up and entered shall prepare and lodge with the registrar or other proper officer, for his consideration, draft lodgment and payment schedules, as the case may be, in the same form as the lodgment and payment schedules to an order, and containing the particulars, so far as the same have been ascertained, which are required by these rules to be contained in the lodgment and payment schedules of the order.

Orders how drawn up and entered.

23. Every order which is to be acted upon by the paymaster shall be drawn up and entered by the registrar, unless the judge otherwise directs, and shall either be wholly printed, or, in cases in which printed forms can be used, may be partly in print and partly in writing.

As to the drawing up and entry of orders by the registrars, see R. S. C., O. 62.

"**Printed.**"—See O. 62, R. S. C., August, 1894, r. 10.

Copy of schedules for paymaster.

24. When any order to be acted upon by the paymaster is left for entry, a further copy of the schedules thereto, initialled by the registrar, and stamped with his official seal on every leaf, shall be left therewith. Such further copy of the schedules shall be examined and sealed, and marked with reference to the order as entered, and shall be sent to the paymaster.

rr. 24—27.

A copy of a lodgment schedule signed by a chief clerk (under rule 5 of these rules) shall be sent to the paymaster by the chief clerk.

This rule is new (1894). It is rendered necessary by the present practice as to entering orders. See R. S. C., O. 62, r. 2.

The following regulations have been issued by the registrars (see 30 Sol. Jo. 717):—

Regulations Concerning the Transmission of Schedules to the Paymaster.

The entering clerks will transmit schedules direct to the paymaster immediately after the order is entered.

For this purpose the entering clerks will keep a book or books in which will be entered the title of each order and its date, and the book containing these entries will be sent, with the schedules, to Room No. 106, where the chief of the room then present will sign the book by way of receipt for the schedules then left.

It will be observed that in no case will a schedule ever be in the hands of the solicitor, and, as a fact, the paymaster will refuse to accept schedules by any other channel than through the entering clerks. By this means a complete record will be preserved of all schedules in the hands of the paymaster.

The paymaster undertakes the duty of distributing the schedules among the several divisions of his department.

Paymaster to act on copy of schedules.

25. The copy of the schedules to an order sent to the paymaster pursuant to the last preceding rule shall be the paymaster's authority for giving effect to the several operations directed therein. No part of the order other than the schedules thereto shall be sent to the paymaster.

See note to r. 10, *supra*.

Additional copies of printed orders.

26. Additional printed copies of orders or schedules may be made according to the requirements of the parties or their solicitors, and when such orders have been entered, such additional copies shall be transmitted to the central office, and upon being duly completed and signed or certified by the proper officer, may be issued as office or certified copies.

Amendment of accidental errors in printed orders.

27. Clerical mistakes or errors, or accidental omissions in printed orders, may be amended in writing: Provided that no amendment shall be made in any order to provide for a new state of circumstances arising after the date of the order; nor shall any order be amended for the purpose of extending the time thereby limited for making any lodgment of funds in court.

When any such amendment is made in a schedule to an order, the copy of such schedule to be sent to the pay office under rule 24 (if not already so sent) shall be amended and stamped in the manner above provided. If such copy has prior to the amendment been sent to the pay office, a notification of the amendment, signed by a registrar, shall be delivered to the solicitor having the carriage of the order, who shall leave such notification at the pay office, and produce therewith the amended order; and the paymaster shall note such amendment on his copy of the schedule and act in accordance therewith.

The first part of this rule is from C. F. R. 1874, r. 16.

As to mode of application for amendment of clerical mistakes, see O. 28, r. 11, (nn.).

III. FORM OF ORDERS FOR THE PAYMENT OF MONEY IN THE QUEEN'S BENCH AND PROBATE, DIVORCE, AND ADMIRALTY DIVISIONS. rr. 28—30.

Form of orders in Queen's Bench and Probate, Divorce, and Admiralty Divisions.

28. In the Queen's Bench and Probate, Divorce, and Admiralty Divisions an order for the payment of money to be acted upon by the paymaster shall be in the Form No. 7 in the Appendix to these rules, or as nearly as may be, and shall be signed by a master or a registrar, or by an official referee, or by a clerk of assize, or an associate, as the case may be.

IV. LODGMENT OF FUNDS IN COURT.

All funds lodged in court to be placed to the account of the paymaster.

29. All funds to be paid into or deposited in court shall be paid or deposited at the Bank of England (Law Courts Branch), or in the case of funds to be lodged in court in the district registries of the high court in Liverpool or Manchester, at the branch banks of the Bank of England in Liverpool or Manchester, and placed in the books of the bank to the account of the Paymaster-General for the time being for and on behalf of the Supreme Court of Judicature; and the bank shall cause a receipt to be given to the person making the payment or deposit.

All securities to be transferred into court shall be transferred to the said account in the books of the bank or other company in whose books such securities are registered.

Any effects brought to the bank to be so deposited in court shall be deposited in locked boxes, or in such other secure manner as shall satisfy the bank; and before taking custody of a box the agent, or other officer acting on behalf of the bank, may at his discretion require an inspection of its contents in presence of the person depositing it.

Cheques for lodgment of money are to be made payable to the Bank of England (Law Courts Branch), for the account of the Paymaster-General (and not to the paymaster personally).

The provisions of this rule as to funds in the Liverpool or Manchester district registries, and the last paragraph of the rule, are new (1894).

See also P. M. R. (22), Vol. I. Pt. II., as to deposit in court of valuable effects.

Manner of lodgment of funds in Chancery Division; and particulars to be stated in request.

30. In the Chancery Division a direction for a lodgment directed by an order, or in a lodgment schedule signed by a chief clerk (in the case of purchase-moneys, or receivers' balances), shall be issued by the paymaster upon receipt of a copy of the lodgment schedule; and a direction for a lodgment under the Trustee Act, 1893, shall be issued by him upon receipt of an office copy of the schedule mentioned in rule 41, or upon receipt of the request and certificate of the Commissioners of Inland Revenue mentioned in that rule.

"**By an Order.**"—For form of lodgment schedule, see Appendix to these rules (No. 1). When the amount to be lodged cannot be ascertained at the date of the order, and the order directs a verification of such amount by affidavit before lodgment, the original affidavit must be filed and an office copy left at the Pay Office at the time of lodgment. Where verification by affidavit is not directed in order, a certificate will be required signed by the party lodging, or his solicitor, or the paymaster may require an affidavit (r. 96, *infra*). The certificate of a firm will not be accepted. All kinds of securities may be lodged except those of any company not established in the United Kingdom, and all shares must be fully paid up and free from any liability. Securities coming within the exception may be ordered to be placed in a box and so lodged

r. 30.

(see P. M. R. (22), Vol. I. Pt. II.). For form of transfer deed, in or out of court, see Pay Office special forms, No. 79 (sold at Inland Revenue Stamp department).

"**A Lodgment Schedule Signed by a Chief Clerk.**"—These lodgments are for purchase-moneys or balances on the accounts of receivers. The lodgment schedule signed by the Master operates in all respects as a schedule to an order (rule 5, *supra*), and it may contain a direction for investment and accumulation, and that the funds are not to be dealt with without notice.

"**Under Trustee Act, 1893.**"—See r. 41.

The paymaster, on a request to that effect signed by or on behalf of a person directed by an order to make a lodgment, may issue a separate direction for lodgment of a part of a sum so directed to be lodged: Provided that the paymaster shall not further deal, under such an order or under these rules, with the amount so lodged until the full lodgment directed by the order has been made; and provided that such lodgment of part of a sum shall not affect or prejudice any liability, process, or other consequences which such person may have become subject to by reason of his default in not lodging the whole sum.

Directions for lodgments in the branch banks of the Bank of England in Liverpool or Manchester may be issued by the district registrars of the court in Liverpool or Manchester.

The above paragraphs are new (1894).

A lodgment of funds in court not directed by an Order may be made upon a direction to the bank or other company, to be issued by the paymaster on a request signed by or on behalf of the person desiring to make such lodgment: Provided that no such lodgment shall be placed in the pay office books to a separate account in a cause or matter (except to a security for costs account) unless an Order has directed such separate account to be opened.

The action or matter must be in existence and not merely *in posse*. Where there is no existing account of the action or matter on the Pay Office books an authentication of the title and reference number will be required, either by the production of papers in the proceedings, or by voucher to be obtained from the Writ, &c., Department, Central Office.

The request for a direction under this rule shall state the name of the person by or on whose behalf the funds are to be lodged, the ledger credit in the pay office books to which the funds are to be placed, and the date of the authority or certificate (if any) in pursuance of which the funds are to be lodged.

In cases of funds to be lodged in pursuance of the Lands Clauses Consolidation Act, 1845, or of the Copyhold Acts, the further particulars required under rules 39 and 40 shall be stated in the request. And when (otherwise than as hereinbefore provided) funds are lodged in court in pursuance of an Act of Parliament, under which some specific authority is necessary for such lodgment, the request for a direction for lodgment shall contain a reference to such Act and authority, and the requisite authority shall be left at the pay office.

Except in the cases next mentioned, the requests under this rule shall be in the Forms No. 8 (for money) and No. 9 (for securities), in the Appendix to these rules.

r. 30.

The "Authority" to be left at the pay office where funds are lodged in pursuance of an Act of Parliament is, in case of funds lodged under the Parliamentary Deposits Act (9 & 10 Vict. c. 20, s. 2), a warrant from one of the clerks in the office of the Clerk of Parliaments, or of the Private Bill Office of the House of Commons; in case of funds consisting of money or securities being, or being part of, or representing a legacy or residue to which an infant or person beyond seas is absolutely entitled lodged under the Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 42, a certificate from the Legacy Duty Office of the payment of the duty, see r. 41A. *infra*; R. S. C., O. 54B, r. 4 (1); in case of funds lodged under the Tramways Act, 1870 (33 & 34 Vict. c. 78), or the Life Assurance Acts, 1870, 1871, or 1872 (33 & 34 Vict. c. 61; 34 & 35 Vict. c. 58; or 35 & 36 Vict. c. 41), a warrant from the Board of Trade in case of lodgment under the Copyhold Act, 1894, a certificate from the Board of Agriculture; in case of lodgment under the Life Assurance Companies (Payment into Court) Act, 1896, an office copy of the Schedule to the affidavit (see r. 41A, *infra*).

As to payment out of fund lodged under this rule, see r. 44, *infra*; and see *Re Earl Stamford*, 33 W. R. 909.

Payment in under L. C. C. Act, 1845, and a Special Act.—A Queen's printer's copy of the Special Act should be produced. If the time allowed by the Special Act has expired, evidence must be produced that notice to treat was given before the expiration of such limited time. A written statement to that effect, signed by the party paying in, or his solicitor, will be sufficient. As to payments under s. 69, see r. 39, *infra*. Under s. 76, when the owner of any lands refuses to accept purchase-money or compensation, or fails to make a title, or is absent abroad, money may be paid in on request containing a proper description of the land. Under ss. 85 and 86, payment may be made into Court (before the amount of purchase-money is settled) of any amount by way of security when the promoters of the undertaking are desirous of entering upon the lands. Such amount will be placed to the credit of the parties interested. The request should state how the amount has been determined (see D. C. P. 2137, 1748, &c.).

Lodgment under Orders 22 and 31 of R. S. C. 1883.

When money is to be lodged under the provisions of Order XXII. of the Rules of the Supreme Court, 1883 (in any action brought to recover a debt or damages) or under the provisions of Rule 26 of Order XXXI. of the said Rules, the request shall be in the Form No. 10 in the Appendix to these rules, and shall contain a statement of the circumstances under which the money is to be lodged, in such of the following terms as may be applicable to the case, viz.:—

(A.) When the money is to be lodged subject to the provisions of rule 5 of Order XXII., a statement in the following terms:—"Paid in on behalf of defendant in satisfaction of claim of above-named [*name of party*]" (*or*, "with defence setting up tender").

(B.) When the money is to be lodged subject to the provisions of rule 6 of Order XXII., a statement in the following terms:—"Paid in on behalf of defendant against claim of above-named [*name of party*], with defence denying liability."

(C.) When the money is to be lodged under the provisions of rule 26 of Order XXXI., a statement in the following terms:—"Paid in to Security for Costs Account on behalf of [*name of party*]."

Under R. S. C., O. 22, r. 9, a plaintiff who is defendant to a counterclaim may pay money into court, notwithstanding that this rule and Form No. 10 in the Appendix only refer to a defendant (*Hutchinson* v. *Barker*, 71 L. T. 625).

rr. 31, 32.

Conditional lodgment of money at the bank in urgent cases.

31. When it is desired to bring money into court in the Chancery Division, whether under an order or otherwise, without waiting the time necessary to obtain a direction for the bank to receive such money, it may be lodged at the bank to the credit of a Supreme Court suspense account (subject to being dealt with as hereinafter mentioned, and not otherwise), upon an application signed by the person desiring to lodge the same, or his solicitor, and addressed to the bank, specifying the amount, and the title of the ledger credit to which it is desired to be lodged, and upon such lodgment being made one of the cashiers of the bank shall give a certificate that the amount has been lodged to the credit of the said suspense account; and in every case the person making such lodgment, or his solicitor, shall forthwith request the direction of the paymaster for the bank to receive the money in the manner provided by the last preceding rule, and shall leave such direction at the bank for the purpose of having the money so previously lodged transferred to the pay office account, and placed in the books of the pay office to the ledger credit mentioned in such direction.

This rule is from the C. F. C. R. 1874, r. 31.

Manner of lodgment of funds in the Queen's Bench Division.

32. In the Queen's Bench Division a lodgment of money to the account of the paymaster shall be made on presentation at the bank (Law Courts Branch) of a request signed by or on behalf of the person desiring to make such lodgment. Such request for lodgment shall be in the Form No. 11 in the Appendix to these rules, or as nearly as may be, and shall specify the title of the cause or matter to the credit of which the lodgment is to be placed, and shall also contain a statement of the circumstances under which the money is lodged, in such of the following terms as may be applicable to the case, viz. :—

(A.) When the money is to be lodged subject to rule 5 of Order XXII. of the Rules of the Supreme Court, 1883, a statement in the following terms :—"Paid in on behalf of defendant in satisfaction of claim of above-named" [*name of party*], (*or* "with defence setting up tender.")

(B.) When the money is to be lodged subject to rule 6 of Order XXII. of the Rules of the Supreme Court, 1883, a statement in the following terms :—"Paid in on behalf of defendant against claim of above-named" [*name of party*] "with defence denying liability."

(C.) When the money is to be lodged under rule 26 of Order XXXI. of the Rules of the Supreme Court, 1883, a statement in the following terms :—"Paid in to Security for Costs Account on behalf of [*name of party*]."

(D.) When the money is to be lodged in pursuance of an order, or otherwise than as above specified, a statement of the nature and date of the authority under which the lodgment is made, as for instance :—"Paid in under order dated the day of 18 ;" *or* "Paid in on notice of appeal [in bankruptcy], dated the day of 18 ."

If the lodgment is made upon a notice or pleading, such notice or pleading must be produced at the bank, and the receipt for the lodgment shall be given thereon; and if the lodgment is made in pursuance of an

order, such order, or an office copy thereof, must be produced at the bank by the person making the lodgment.

A lodgment of funds other than money shall be made upon a direction to be issued by the paymaster upon receipt of a copy of the order directing such lodgment.

Compare Rules 1 and 2 in Appendix M. to the R. S. C. 1883. As to payment out of money lodged under this rule, see rule 44, *infra*.

Lodgments under Orders XXII. and XXXI. to be distinguished in pay office books.

33. In every case of a lodgment in the Chancery and Queen's Bench Divisions under the provisions of the said Orders XXII. and XXXI., as provided in the preceding rules 30 and 32, the paymaster shall cause an entry to be made in his books indicating the circumstances under which the money is stated to be lodged.

Manner of lodgment of funds in Probate. Divorce. and Admiralty Division; such lodgments to be notified to registrar.

34. In the Probate, Divorce, and Admiralty Division a lodgment of funds to the account of the paymaster shall be made upon presentation at the bank (Law Courts Branch) of an authority signed by or on behalf of a registrar. Such authority shall be issued upon a request signed by or on behalf of the person desiring to make such lodgment. The request shall specify the title of the cause or matter (which in Admiralty actions shall include the name of the ship), and any particulars of the lodgment which may be necessary, and shall be in the Form No. 12 in the Appendix to these rules.

When the receipt of funds authorised to be lodged as above has been certified to the paymaster by the bank, the paymaster shall cause a notification of the lodgment to be sent to the registrar by whom or on whose behalf such lodgment was authorised.

Requests and directions may be sent by post.

35. A request or authority for the issue by the paymaster of a direction for the lodgment of funds in court may be sent to the paymaster by post, and, if so desired by the person sending the same, the paymaster shall send such direction by post to the address specified by such person.

This rule enables a lodgment to be made without any personal attendance at the pay office, which was previously necessary.

Persons may bring funds into court in Chancery Division though time limited by order has expired.

36. A person directed by an order in the Chancery Division to make a lodgment in court shall be at liberty to make the same without further order, notwithstanding the order may not have been served, or the time thereby limited for making such lodgment may have expired; and if any further sum of money has by reason of such default become payable by such person for interest, or in respect of dividends, he shall be at liberty to lodge in court such further sum upon a request as hereinbefore provided: Provided that any such subsequent lodgment shall not affect or prejudice any liability, process, or other consequences which such person may have become subject to by reason of his default in making the same within the time so limited.

This rule is from C. F. C. R. 1874, r. 27.

Upon receipt or transfer of funds, direction to be returned to paymaster.

37. When funds have been received by the bank and when securities have been transferred in the books of the bank or any other company to the pay office account in accordance with a direction, the bank or other company shall forthwith send such direction to the paymaster, with a certificate thereon that the funds specified have been received or transferred as therein authorised, and (in the case of such other company)

rr. 37—40.

shall therewith send the stock or share certificate (if any) of the securities so transferred.

Certificate of lodgment in Chancery Division to be filed.

38. In the Chancery Division, when any direction or other authority for the lodgment of funds in court is returned to the pay office, with a certificate thereon that the funds therein mentioned have been lodged, the paymaster shall, as soon as practicable, file at the Central Office a certificate of such lodgment, and shall therein state the ledger credit to which such funds have been placed in the books at the pay office; and an office copy of such certificate of the paymaster shall be received as evidence of the lodgment.

Certificates or notifications of lodgments at the branch banks of the Bank of England in Liverpool or Manchester (in Chancery and Admiralty causes and matters) shall be transmitted by the paymaster to the respective district registrars, and shall be filed in the district registries (instead of in the central office).

The first paragraph of this rule is from C. F. C. R. 1874, r. 30. The second paragraph is new (1894).

When money is lodged under Act 8 Vict. c. 18, s. 69, disability to be stated.

39. Money lodged in court in the Chancery Division pursuant to the 69th section of the Lands Clauses Consolidation Act, 1845, in respect of lands in England or Wales, shall be placed in the books at the pay office to the credit of Ex parte the promoters of the undertaking, in the matter of the special Act (citing it), and some words shall be added in each case briefly expressive of the nature of the disability to sell and convey, by reason of which the money shall be so paid in, which particulars shall be stated in the request for the direction for the lodgment.

This rule is from the C. F. C. R. 1874, r. 32.

See the 69th section of the L. C. C. Act, 1845, and the notes thereto in Morg. 27—31; also S. L. Act, 1882, ss. 21, 22, 32, 40; 48 & 49 Vict. c. 72, s. 11; Vaizey, 690—697, 702.

Title of the Account.—See *Drake* v. *Greaves*, 33 C. D. 609.

Where under this rule funds are lodged in court to a credit which sufficiently expresses the interests of the parties, it is not necessary, upon an application for investment, to carry over the fund to a new credit.

Costs.—As to costs of reinvestment, where funds paid in under different Acts are reinvested together, see *Ex p. Curate of Bilston*, 37 W. R. 460.

Where land is the subject of an action, all the parties must be served, and the costs of service and appearance fall on the company (*Re English's Settlement*, 39 C. D. 556).

Costs of reinvestment in railway preference stock of redemption money of consols representing purchase-moneys paid into court by a railway company ordered to be paid by the company, as the reinvestment was rendered reasonably necessary by the act of the legislature (*Re Brown*, 38 W. R. 529).

Sums under £200.—Under s. 71 of the Act, sums over £20 and under £200 may either be paid into court or to two trustees.

Money lodged under the Copyhold Acts to be specially described.

40. Money lodged in court in the Chancery Division pursuant to the Copyhold Acts shall be placed in the books at the pay office to the credit of "Ex parte the Board of Agriculture," and of the particular manor in respect of which the money shall be so paid in; and in the request for a direction for the lodgment the name and locality of such particular manor shall be stated.

From C. F. C. R. 1874, r. 33.
See Seton, 182; and C. F. Amended Orders, r. 15.
"**Board of Agriculture.**"—Formerly Land Commissioners for England.

Lodgments under the Trustee Act, 1893.

41. Where a legal personal representative desires to lodge funds in court, under the Trustee Act, 1893, without an affidavit, he shall leave with the paymaster a request, signed by him or his solicitor, with a certificate of the Commissioners of Inland Revenue; such request and certificate to be in the Form No. 16 in the Appendix to these Rules, with such variations as may be necessary, or, as regards such certificate, in such other form as shall from time to time be adopted by the said Commissioners, with the consent of the Lords Commissioners of Her Majesty's Treasury. The money or securities so lodged shall be placed to the credit mentioned in such request.

Taken from S. C. F. R. 1893, r. 5. See the proviso at end of r. 4 (i.) of R. S. C. O. 54B.

When a trustee or other person desires to lodge funds in court in the Chancery Division under the Trustee Act, 1893, upon an affidavit, he shall annex to such affidavit a schedule in the same printed form as the lodgment schedule to an order, setting forth :—

(*a.*) His own name and address :

(*b.*) The amount and description of the funds proposed to be lodged in court :

(*c.*) The ledger credit in the matter of the particular trust to which the funds are to be placed :

(*d.*) A statement whether legacy or estate or succession duty (if chargeable) or any part thereof has or has not been paid :

(*e.*) A statement whether the money or the dividends on the securities so to be lodged in court, and all accumulations of dividends thereon, are desired to be invested in any and what description of Government securities, or whether it is deemed unnecessary so to invest the same.

An office copy of such schedule is to be left with the paymaster.

Taken from S. C. F. R. 1893, rr. 2, 4.
"**Affidavit.**"—See R. S. C., O. 54B, r. 4 (1).
Notice.—As to notice of payment into Court, see R. S. C., O. 54B, r. 4 (2) (*a*).
Payment into court is made without any order (*Re Biggs*, 11 Beav. 27); but if the payment in is improper, the trustees may be held liable for the costs. (See Morg. 53—56; *Re Birkett*, 9 C. D. 576.) As to costs of payment in, see *Re Parker's Will*, 39 C. D. 303.
The affidavit may be made by one of several trustees (*Anon.*, 1 Jur. N. S. 974); though, where reasonably possible, all should join.
Form.—The affidavit may be written or printed; the lodgment schedule, which has to be left at the pay office, *must* be printed.
Should the lodgment schedule require amendment or correction, a supplemental affidavit may be filed with a corrected schedule.

Payment into Court under Life Assurance Companies Act, 1896.

41A. Where a company desires to lodge money in Court under the Life Assurance Companies (Payment into Court) Act, 1896, there shall be annexed to the affidavit directed to be made by Order LIV. C., rule 1 of the Rules of the Supreme Court or any substituted rule, a lodgment schedule stating the title and address of the company, the amount of the money proposed to be lodged, and the ledger credit to which it is to be placed, such ledger credit shall be as follows, with any necessary varia-

rr. 41a—44.

tions:—In the matter of the Policy No. of the company. An office copy of the schedule is to be left with the paymaster.

On receipt by the paymaster of any subsequent notice of claim transmitted by such company pursuant to their undertaking referred to in subsection (*e*) of the said rule, he shall retain the same and make an entry thereof in his books; and on any certificate of the fund to which such notice refers he shall notify the name of the person giving such notice and the date thereof.

The paymaster shall also, upon such request as is mentioned in rule 100, and upon payment of the same fee as is payable for a transcript under that rule, supply a copy of such notice.

The above rule is dated 26th October, 1896.
"**Order LIV. C.**"—See Vol. I.

Credit to which proceeds of securities and dividends are to be placed.

42. Any principal money or dividends received by the bank in respect of securities standing to the pay office account shall be placed in the books at the pay office, in the case of principal money to the credit to which the securities whereon such money arose were standing at the time of the receipt thereof, and in the case of dividends to the credit to which the securities whereon such dividends accrued were standing at the time of the closing of the transfer books of such securities previously to the dividends becoming due.

V. APPROPRIATION IN THE QUEEN'S BENCH DIVISION OF MONEY LODGED UNDER ORDER XIV.

Appropriation of money lodged under Order XIV. of R. S. C. 1883.

43. In the Queen's Bench Division, when a defendant has lodged money in court under Order XIV. of the Rules of the Supreme Court, 1883, as a condition of liberty to defend, and desires to appropriate the whole or any part of such money to the whole or any specified portion of the plaintiff's claim pursuant to rule 11 of Order XXII. of the said rules, he or his solicitor shall leave at the pay office a notice of such appropriation in the Form No. 13 in the Appendix to these Rules, specifying the title of the cause or matter, to the credit of which the money is standing, the date of the Order under which the money was lodged in court, and the amount to be appropriated; and whether so appropriated, (A) in satisfaction of a claim, or (B) against a claim, with a defence denying liability; and thereupon, for the purposes of payment out of court, the money mentioned in the notice shall be subject to the next following rule. The person leaving such notice must produce therewith the original receipt of the bank for the amount lodged.

VI. PAYMENT, DELIVERY, AND TRANSFER OF FUNDS OUT OF COURT AND OTHER DEALINGS WITH FUNDS.

Payment out of court of money lodged under orders 22 and 31 of R. S. C. 1883.

44. In the Chancery and Queen's Bench Divisions, when money has been lodged under Orders XXII. and XXXI. of the Rules of the Supreme Court, 1883 (as described in rules 30 and 32 of these rules), and when and so far as money lodged under Order XIV. of the said rules of the Supreme Court has been appropriated in the manner provided in the last preceding rule, payment of the money shall be made to the person in satisfaction of whose claim it has been lodged, or to the person otherwise entitled thereto, or, on the written authority of either such person re-

spectively, to his solicitor, as under:—unless an order restraining such payment has been lodged at the pay office prior to the issue of the paymaster's direction for payment.

(A.) When the money has been lodged or appropriated in satisfaction of a claim (or with defence setting up tender), under rules 30 (A.) and 32 (A.) of these rules, or the last preceding rule, a direction for payment shall be issued by the paymaster upon a request or authority in the Form No. 14 (A.) in the appendix to these rules, or as nearly as may be.

(B.) When the money has been lodged or appropriated against a claim, with a defence denying liability, under rules 30 (B.) and 32 (B.) of these rules, or the last preceding rule a direction for payment shall be issued by the paymaster upon receipt of a notification that the plaintiff accepts the sum lodged in satisfaction, and that due notice has been given of such acceptance, and upon a request or authority for payment of the same; such notification and request or authority to be in the Form No. 14 (B.) in the appendix to these rules, or as nearly as may be.

(C.) When the money has been lodged to a security for costs account under rules 30 (C.) and 32 (C.) of these rules, a direction for payment shall be issued by the paymaster upon receipt of a certificate of a taxing officer, master, or chief clerk (as the case may be) as to the person who is entitled to have paid out to him the money so lodged; such certificate to be printed, or partly printed, and as nearly as may be in the Form No. 14 (C.) appended to these rules.

When a request is made for payment of money lodged in the Chancery and Queen's Bench Divisions on a notice or pleading, the original receipted notice or pleading must, whenever so required, be produced at the pay office.

In the Probate, Divorce, and Admiralty Division when money has been lodged to a security for costs account, under the provisions of rule 26 of Order XXXI. of the Rules of the Supreme Court, 1883, a direction for payment shall be issued by the paymaster upon receipt of a certificate or other authority of a registrar as to the person entitled to payment of the money so lodged.

Except as in this rule is provided, the money so lodged or appropriated as mentioned herein, shall only be paid out in pursuance of an order.

Paragraph (C.) of this rule is from the S. C. F. R. October, 1884.

In the Chancery Division, previously to these rules, it was impossible to obtain money out of court without an order.

Money may now be remitted through the post (see r. 48, *infra*).

As to the directions of the paymaster for payment, see r. 49, *infra*.

In other cases funds to be dealt with only in pursuance of an order.

45. Except as provided in the last preceding rule, and subject to the provisions contained in rules 55, 56, 57, 70, 73, 74, and 109, funds in Court shall not be paid, delivered, or transferred out of court, nor invested, sold, or carried over, unless in pursuance of an order, or in the case of an investment of money or application of dividends unless in pursuance of an authority contained in a certificate of a master in lunacy.

See O. 22. r. 12.

rr. 45—47.

Money paid to Wrong Person.—As to recovery of money paid out to person not entitled, see *Slater* v. *S.*, 58 L. T. 149; *Marsh* v. *Joseph*, (1897) 1 Ch. 213.

Payment out of funds paid in under L. C. C. Act.—See Morg. 27—31; Vaizey, 496—511, D. C. P.; O. 55, r. 2 (7).

Costs.—Costs of appearance of the trustee of a settlement under which the applicant had been found to be absolutely entitled (*Re English's Settlement*, 39 C. D. 556); and of a lessor to whom rent was due on his lessee's application for payment of the price of his interest in the property (*Re London Street, Greenwich, &c.*, 57 L. T. 673) have been ordered to be paid by the purchasing bodies; as were the costs of a petition for an order to pay dividends to new committee in lunacy (*Re Ryder*, 37 C. D. 595, the will in that case providing that the past and future dividends should be carried to the credit of the Lunacy, and when so carried over be paid to the petitioner; on a subsequent change of committee the order appointing him should direct payment of the dividends to him, and it would not be necessary to serve the purchasing body). As to costs of proceeding by petition or summons, see R. S. C., O. 55, r. 2 (7) (nn.). As to apportionment of costs rateably between various public bodies who have compulsorily taken land, see *Re Bishopsgate Foundation*, (1894) 1 Ch. 185. Costs, charges and expenses of investment of a fund paid into Court by a public body in erection of new buildings, and of obtaining the order, and the costs, &c., including architect's fees, incurred in or about or in relation to the contract for execution of the works ordered to be paid by the public body (*Re Arden*, 70 L. T. 506).

Payment to Trustees.—Upon the question whether money may be paid out to trustees for sale, as persons absolutely entitled, see *Ex p. Bowman*, W. N. (88) 179, following earlier cases in so treating them; *Re Samuel Smith and L. & N. W. Ry. Co.*, 40 C. D. 386, where the C. A. held that they are not such persons, though since the commencement of the S. L. A., 1882, ss. 32, 21 (ix), 22, 40, the Court may if it thinks fit pay to trustees of the settlement not only capital money arising under that Act, but money arising under any Act.

Service.—On application for payment out of deposit under s. 85, service on representative of deceased tenant for life was dispensed with (*Ex p. Lancashire and Yorkshire Ry. Co.*, 55 L. T. 58; *Ex p. Midland Ry. Co.*, W. N. (94) 38; but see *Ex p. L. & N. W. Ry. Co.*, W. N. (87) 128).

Life Assurance Companies Act, 1870.—On petition for payment out of deposit under the Life Assurance Companies Act, 1870, depositors ordered to be co-petitioners (*Re Scottish Life Assurance Co.*, W. N. (87) 64).

A copy of every order dealing with funds in the Q. B. and P. D. and A. Divisions to be left at the pay office.

46. A duly authenticated copy of every order in the Queen's Bench and Probate, Divorce, and Admiralty Divisions which directs funds to be dealt with, shall be left at the pay office, by or on behalf of the person entitled to payment or interested in any other dealings with such funds directed or authorised by the order, and shall be the paymaster's authority for the issue of directions giving effect to such orders.

Paymaster to prepare directions giving effect to orders upon receipt of the necessary authority and information.

47. The directions of the paymaster for the payment of money under these rules, and for the delivery of securities out of court in pursuance of an order, shall be prepared by the paymaster forthwith, or from time to time, upon receipt of a copy of the order and any further necessary authority or information; and except as provided in the next following rule such directions shall be delivered upon the personal application of the persons entitled thereto.

Investments of money, transfers of securities out of court, and carrying over of funds, in pursuance of an order, shall be made by the paymaster upon receipt of the necessary authority and information.

Sales of securities in pursuance of an order, of which a copy has been received in the pay office, shall be made by the paymaster upon application by or on behalf of the persons interested therein, and such application may be sent by post.

This rule effects a considerable change in the previous practice, it having been formerly necessary in Chancery to take the original order to the pay office, and to draw attention to each particular direction when required to be carried out. (See now rules 10, 24, and 46, *ante*.)

Payments may be made by post.

48. Subject to the conditions as to limitation of amount and otherwise in this rule mentioned, and to any variation of such conditions which the Treasury may from time to time direct, persons entitled to payment of money may receive from the paymaster, by post, a direction or other document by which payment may be obtained :—

(*a*.) When money, not exceeding a sum of 1,000*l*. (other than a periodical payment hereunder in this rule mentioned), is payable to a person having an account at a bank in the United Kingdom, whose name and address are stated in the Order or other authority under which the money is payable, or in a certificate of a chief clerk, or of a taxing officer, or of a Master in Lunacy, to be acted upon by the paymaster, or whose address, in the case of a payment under an Order in the Chancery Division, is certified to the paymaster by a solicitor having carriage of the Order which authorizes the payment, the paymaster shall remit the same by post to such person to the address so stated, upon receipt of a request to that effect in the prescribed form, in which is specified the name of the bank at which the money is to be placed to the account of such person. The paymaster's direction for payment will be payable to the order of such person ; it will be specially crossed to his account at the named bank and will not be negotiable.

(*b*.) When money, not exceeding a sum of 500*l*. (other than a periodical payment hereunder in this rule mentioned), is payable to a person residing within the United Kingdom, who has not an account at a bank, or whose address is not ascertained by the paymaster in the manner above prescribed, the paymaster shall remit the same by post to such person upon receipt of a request to that effect in the prescribed form, signed by such person and attested by a justice of the peace, or a commissioner to administer oaths, or a clerk in holy orders, or a notary public. The paymaster's direction for payment will be sent to the address stated in the request, and will be crossed so as to be payable only through a banker.

(*c*.) When money, not exceeding a sum of 10*l*. (other than a periodical payment hereunder in this rule mentioned), is payable to a person residing within the United Kingdom, whose name and address are stated in an Order under which the money is payable, or in a certificate of a chief clerk, or of a taxing officer, or of a master in lunacy, to be acted upon by the paymaster, or whose address, in the case of a payment under an Order in the Chancery Division, is certified to the paymaster by the solicitor having carriage of the order, the paymaster upon the written request of such person (without attestation) may remit the

rr. 48—50.

amount by post to such person at the address so ascertained. The direction for payment will be crossed so as to be payable only through a banker.

(*d.*) Any person residing within the United Kingdom, entitled under an order to any dividend, annuity, or other periodical payment, may send to the paymaster a request, in the prescribed form, for the remittance of the same by post from time to time as it accrues due, such request to be signed by such person and attested in the manner required in the preceding part of this rule (*b*), and the paymaster shall thenceforward, as such periodical payment falls due (and upon receipt of evidence of life or of the fulfilment of any conditions of payment as referred to in rule 95), remit the same by post to the address stated in the request. The paymaster's direction will be crossed so as to be payable only through a banker.

No less sum than one shilling to be paid.

(*e.*) Except in the cases of periodical payments of annuities, or of dividends or interest on funds in Court, no sum of less than one shilling shall be paid by the paymaster.

Provided that the paymaster may refuse to make a remittance under this rule in any case in which he sees reason for so doing, and provided also that the transmission by post upon a request of any crossed direction or other document for obtaining payment shall be at the sole risk of the person at whose request it is sent.

Requests and solicitors' certificates of addresses under this rule and notifications of changes of addresses of persons entitled to periodical payments, shall be in such form as may from time to time be prescribed by or with the approval of the Treasury.

See the S. C. F. Act, 1883, s. 6, *ante*.

This rule greatly extends the provisions of rule 48 of the S. C. F. R. 1884, previously to which personal application at the pay office was always necessary.

Paymaster's directions to be sufficient authority to the bank or other company.

49. The directions of the paymaster issued under these rules (signed and countersigned by such officers as may be prescribed or approved by the Treasury, under rule 107) shall be sufficient authority to the bank for the payment of the money specified in any such directions, and shall be the necessary and sufficient evidence of an order of the court to authorise the bank or other company to transfer, on sale or otherwise, or to deliver, any securities, or boxes, or other effects, standing to the pay office account which may be specified in any such directions.

Compare the C. F. C. R. 1874, r. 38.

This rule enables payment to be made by some form of document other than a cheque if it should be found desirable.

Discharge to paymaster.

50. A direction or other document by which payment of money is effected, when indorsed or signed by the payee or his lawful attorney, shall be a good discharge to the paymaster for the amount therein expressed.

Powers of Attorney.—*In what cases granted.*—The paymaster will only act on powers of attorney prepared in the Pay Office according to the special requirements of each individual case. The paymaster will not make out a power of attorney to a solicitor's clerk as such, or to a banker's clerk as such, without a special request from his employer. A married woman may hold a power, but it must contain a stipulation

that the amount is to be paid to her "on her separate receipt." Where a married woman seeks to give a power to her husband, the solicitor making the application must state in the bespeak that "*to his knowledge she makes the application voluntarily.*"

By whom Application may be made.—A power of attorney can only be bespoken by (1) a solicitor practising in London and identified in the Pay office books; (2) a London banker; or (3) the grantor personally, who must be identified to the satisfaction of the paymaster.

Evidence of Life.—Evidence of life of the grantor of a power of attorney must be given before payment of dividends, except in the case of the first payment under a power executed after the date at which the dividends fall due, and of which payment is promptly applied for. In the case of payment of a principal sum under a power of attorney, evidence of life will be required unless payment applied for within reasonable time after the date of the power.

Revocation.—A power of attorney, in the form as issued by the paymaster, will be revoked (1) by the grantor receiving the amount, or any part thereof, personally; (2) by letter from the grantor to the paymaster formally revoking the power; (3) by marriage of a *feme sole*. But a power given by her may remain in force by compliance with the requirements of rule 61, *infra*; (4) by bankruptcy of the grantor; (5) by the grantor becoming a lunatic, or of unsound mind, or dying; (6) by bespeaking a new power.

Authorities for payments to others than named persons to be witnessed.

51. When money is by an order in the Queen's Bench Division directed to be paid to a person therein named, or, on his authority, to a solicitor or other person, the signature to the authority must be attested by a witness, whose residence and description must be added to his attestation.

As to verification of authority by person residing in Germany, see *Re Schmidt*, 31 Sol. Jo. 234; and see *ib.* p. 248.

Payments to official persons to be made by transfer.

52. When money in court or any sum payable thereout is by an order directed to be paid to any public officer or department or to the official liquidator of any company, or any other official persons for whom an account is kept at the bank, payment thereof shall, on a request to that effect, be made by a direction to the bank to transfer the amount of such payment to the proper account at the bank accordingly.

When any duty is directed to be paid out of funds in court, such duty shall, without any words in the order to that effect, be assessed, and on a request made by or on behalf of the Commissioners of Inland Revenue be transferred to the proper account at the bank.

When a person to whom money is payable in his own right under an order becomes bankrupt, the paymaster, upon the request of the official receiver, or trustee, or other duly authorised person, shall transfer the amount so payable to the proper account at the bank.

The last paragraph of this r. is new (1894).

"**Duty.**"—See rules 20, *supra*, and 66, *infra*, as to legacy, estate, and succession duty.

The paymaster requires the solicitor concerned to endorse on the Inland Revenue requisition a certificate that the amount is for the whole of the duty directed to be paid by the order.

Payments for securities purchased; and transfers of securities sold.

53. When money in court is invested by purchase, the payment for such investment, which (unless otherwise ordered) shall include brokerage, shall be made conditionally upon the transfer or deposit to the pay office account of the securities purchased. And when securities in court

rr. 53—57.

are sold, the transfer or delivery of such securities shall be conditional upon the payment to the pay office account of the proceeds of such sale after deduction (unless otherwise ordered) of brokerage.

Provided that the bank shall not be answerable for any default of the broker of the Supreme Court in respect of such transfer to the pay office account of securities purchased, or of such payment to the pay office account of the proceeds of securities sold.

As to investments generally, see rr. 69 to 75, *infra*.

Accounts to which investments, sales, &c., are to be credited.

54. Upon an investment of money in court or the sale of securities in court, the securities purchased by such investment or the money realised by such sale, respectively, shall in every case be placed to the credit to which the money invested or the securities sold previously stood, unless, in the case of an investment, otherwise specially ordered.

Application of dividends accruing on securities transferred.

55. When securities in court are directed to be transferred, delivered out, or carried over, dividends accruing thereon subsequently to the date of the order directing the transfer, delivery, or carrying over (when the amount of the securities to be transferred, delivered, or carried over is specified in such order, or if not so specified then subsequently to the time when the amount of such securities shall be ascertained) shall be paid to the persons to whom or carried over to the credit to which the securities are to be transferred, delivered, or carried over unless such order otherwise directs. When securities in court are directed to be realised, and the whole of the proceeds paid out or carried over in one sum, or in aliquot parts (except when the realisation is to raise a specific sum of money), any dividends accruing on such securities subsequent to the date of the order directing the realisation (if the amount of such securities is specified in the order, or if not so specified, then subsequently to the time when such amount shall be ascertained) shall be added to such proceeds, and applied in like manner therewith, unless such order otherwise directs.

This is from C. F. C. R. 1874, r. 46.

Where an order for payment of dividends to a person not entitled was obtained, repayment by that person's representatives was ordered, and any deficiency by the solicitor through whose carelessness the error had arisen, who had also to bear the costs of the petition to obtain correction of the error (*Re Dangar's Trusts*, 41 C. D. 178, 199); and see *Marsh* v. *Joseph*, (1897) 1 Ch. 213.

When such dividends have been invested.

56. When such dividends as in the last preceding rule mentioned have pursuant to a general or other previous order been invested, the securities purchased with such dividends shall, unless otherwise directed, be transferred or delivered, and any dividends accrued in respect thereof be paid, to the persons to whom or carried over to the credit to which such first-mentioned dividends would if uninvested have been paid or carried over.

When dividends otherwise applicable have been invested.

57. In every case (other than that provided for by the last preceding rule), when by an order money or dividends are directed to be dealt with so that the same ought not to be invested, and subsequently to the date of such order such money or dividends or any part thereof shall have been invested, the securities purchased with such money or dividends

shall, unless otherwise directed, be sold, and the proceeds of such sale and any dividends accrued in respect of such securities shall be applied in the same manner as the money or dividends so invested would have been applied under such order, if they had not been so invested.

From C. F. C. R. 1874, r. 48.

Dividends on residue.

58. When under any order dividends on securities in court are directed to be dealt with, and a subsequent order is made dealing with part of such securities, the dividends on the residue shall, unless such subsequent order shall otherwise direct, continue to be dealt with in the same manner as the dividends on such securities were by the prior order directed to be dealt with.

Application of money or dividends, placed on deposit after date of order dealing therewith.

59. When subsequently to the date of an order dealing with money in court such money shall have been placed on deposit, as hereinafter provided, or when dividends accruing subsequently to the date of an order under which such dividends are applicable shall have been placed on deposit, the same when withdrawn from deposit, and any interest credited in respect thereof, shall, unless the order otherwise directs, be applied in the same manner as such money or dividends would have been applied had the same not been so placed on deposit.

This and the next rule are identical with C. F. C. R. 1874, rr. 50 and 51.

As to deposit, see rr. 76 to 85, *infra*.

Application of interest on money placed on deposit after date of order directing its investment.

60. When an order directs money in court to be invested, and subsequently to the date of such order the money shall have been placed on deposit, interest accruing in respect of such money shall be applied in the same manner as the dividends arising from such investment are directed to be applied.

See last note.

Funds ordered to be paid or transferred to women who afterwards marry.

61. When funds in court are by an order directed to be paid, transferred, or delivered to a woman in her own right who is not married at the date of the order, or who, being married at that date, shall become a widow, and such woman shall marry before payment, transfer, or delivery of such funds, upon an affidavit of such woman and her husband that no settlement or agreement for a settlement whatsoever has been made or entered into, before, upon, or since their marriage, or in case any such settlement or agreement for a settlement has been made or entered into, then upon an affidavit of such woman and her husband identifying such settlement or agreement for a settlement, and stating that no other settlement or agreement for a settlement has been made or entered into as aforesaid, and an affidavit of the solicitor of such woman and her husband that such solicitor has carefully perused such settlement or agreement for a settlement, and that, according to the best of his judgment, such funds are not, nor is any part thereof, subject to the trusts of such settlement or agreement for a settlement, or in any manner comprised therein or affected thereby, such funds shall be paid, transferred, or delivered to such woman without the intervention or concurrence of her husband in the same manner as if she had remained unmarried. When payments not exceeding £60 per annum are by an order directed to be made to a mother as guardian of her infant children, and such mother marries after

rr. 61, 62.

the date of the said order, such payments may be made to her, notwithstanding her marriage, on her separate receipt.

The last provision as to payment of maintenance money is new (1894). Compare C. F. C. R. 1874, r. 52; and see Seton, 787—793; and for forms of affidavits, D. C. F. pp. 780—1.

The affidavit was dispensed with by the Court where the fund was under 20*l*. (*Guest* v. *Neames*, W. N. (84) 227).

As to dispensing with the examination of married women on payment out of funds in court, see R. S. C. O 16, r. 16, (n.) "Dispensing with examination."

Where payment is ordered to be made to a married woman, *on her sole receipt*, or *for her separate use*, her husband need not join in the receipt.

Payments, &c. to representatives of deceased persons.

62. When funds in court are by an order directed to be paid, transferred, or delivered to any person named or described in an order, or in a certificate of a chief clerk, or of a taxing officer, or of a master in lunacy (except to a person therein expressed to be entitled to such funds as real estate, or to be entitled thereto as a trustee, executor, or administrator, or otherwise than in his own right, or for his own use), such funds, or any portion thereof for the time being remaining unpaid or untransferred or undelivered, may, unless the order otherwise directs on proof of the death of such person, whether on or after, or, in the case of payment directed to be made to creditors as such, before the date of such order, be paid or transferred or delivered to the legal personal representatives of such deceased person or to the survivors or survivor of them.

If no administration has been taken out to any such deceased person who has died intestate and whose assets do not exceed the value of 100*l*., including the amount of the funds directed to be so paid, transferred, or delivered to him, such funds may be paid, transferred, or delivered to the person who, being widower, widow, child, father, mother, brother, or sister of the deceased, would be entitled to take out administration to his estate, upon a declaration by such person in the Form No. 15 appended to these rules.

Compare C. F. C. R. 1874, r. 53.

The latter clause of this rule has been amended by the addition of the word "widower." Previously, although the rule did not expressly provide for the case of a widower entitled to take out administration to his wife, such widower had been treated as within the rule (see 30 Sol. Jo. p. 779).

Under this rule, when a person entitled to have money paid out to him *in his own right* (and not as heir-at-law), dies after the date of the order, his representatives may obtain payment without further order, if the probate or letters of administration have been granted within six years after the date of the order or, in the case of periodical payments, after the date of the last payment (r. 65, *infra*). The probate or letters of administration must be produced at the pay office, together with a certificate of death, and an office copy affidavit identifying the deceased as the person named in the order for payment, and in the probate or letters of administration, and in the certificate of death; and further, stating the nature of the transaction and amount, and the names of the executors or administrators. The probate or letters of administration must cover the amount to be dealt with, must bear date after the date of the order, and should be exhibited with the certificate of death to the affidavit. The affidavit must neither be made by, nor sworn before, the executor or administrator

Where the payee is described in the order as a creditor, evidence of representation may be taken, although the death took place before the date of the order. The affidavit may be dispensed with when the sum to be paid does not exceed 10*l*.

When funds are directed to be paid to representatives of a deceased person *when constituted*, the same evidence of identity will be required in every respect, except that evidence of death need not be given.

Where funds become payable to an executrix, administratrix, or trustee who is a married woman, if the probate, &c., is dated after 1st January, 1883, she may give a receipt without her husband, but if such probate, &c., is dated prior to 1st January, 1883, the husband must join in the receipt.

Scotch confirmations and Irish and Colonial probates must be resealed in England.

Payments, &c., to partners.

63. When money in court is by an order directed to be paid to any persons described in the order, or in a certificate of a chief clerk, or of a taxing officer, or of a master in lunacy, as co-partners, such money may be paid to any one or more of such co-partners, or to the survivor of them.

This and the next rule are from C. F. C. R. 1874, r. 54.

Payments, &c. to surviving representatives.

64. When funds in court are by an order directed to be paid, transferred, or delivered to any persons as legal personal representatives, such funds, or any portion thereof for the time being remaining unpaid, untransferred, or undelivered, may, upon proof of the death of any of such representatives, whether on or after the date of the order directing such payment, transfer, or delivery, be paid, transferred, or delivered to the survivors or survivor of them.

Within what time probate or letters of administration must have been granted.

65. No funds shall, under rules 62 and 64, be paid, transferred, or delivered out of court to the legal personal representatives of any person under any probate or letters of administration purporting to be granted at any time subsequent to the expiration of six years from the date of the order directing such payment, transfer, or delivery, or in case such funds consist of interest or dividends from the date of the last receipt of such interest or dividends under such order.

This is from C. F. C. R. 1874, r. 56.

Payment of legacy or estate or succession duty.

66. The paymaster, before acting upon an order for the payment, transfer, or delivery of funds in respect of which legacy or estate or succession duty is (under rule 20) stated to be payable, shall require the production of the official receipt for such duty, or a certificate from the proper officer of the payment thereof, or that no such duty is payable; and the paymaster, on receiving notice from the proper officer in any case that such duty is payable, shall cause a memorandum to that effect to be made in his books.

Cf. C. F. C. R. 1874, r. 57; and see rr. 20 and 52 of these Rules.

When the particulars in the official receipt cannot be identified with those in the paymaster's schedule to the order, it is necessary to obtain a certificate of the payment of the duty.

Carrying over fees on proceedings and taxation and unpaid

67. When costs are by an order directed to be paid out of funds in court, the taxing officer shall certify the names and addresses of the persons respectively to whom such costs are payable, and the amount of any fees which have not been paid but are payable, and are proper to be paid out of such funds, in respect of any proceedings in the cause or matter,

rr. 67—70.

whether the amount shall or shall not have been previously ascertained, and in respect of the taxation of such costs. The paymaster shall carry over the amount so certified to be payable from the account to which such funds are placed to an account in the pay office books for fees on proceedings and taxation; and the amount so carried over shall from time to time, as the Treasury may direct, be paid to the account of Her Majesty's Exchequer.

Sums of less than one shilling.

Sums of less than one shilling held by the paymaster under rule 48 (*e*) shall be placed to a special account in the pay office books.

The last paragraph of this rule is new (1894).

Compare C. F. C. R. 1874, r. 58; and see r. 12, *supra*.

Deduction of income tax on payments of annuities or maintenance.

68. In acting on orders directing any annuities or maintenance to be paid out of dividends to accrue on securities in court (other than securities specifically carried over to provide for such annuities or maintenance), the paymaster shall draw only for so much of the sums directed by such orders respectively to be paid as shall remain after making a deduction therefrom for income tax at the rate payable when such annuities or other payments became due, unless such sums shall be directed to be paid without making any such deduction.

From C. F. C. R. 1874, r. 59.

VII. INVESTMENTS.

Investment of accruing dividends under an order.

69. When an order directs the investment and accumulation of dividends accruing on securities in court, or to be transferred into court, or directed to be purchased with money in court, or to be lodged in court, the paymaster upon receipt of the copy of such order shall, without any request, from time to time (until he shall receive a request or copy of an order to the contrary) invest such dividends, if amounting to or exceeding 40*l*. half yearly, together with all accumulations of dividends thereon, as soon as conveniently may be after they shall accrue due and have been received, in the particular description of securities named in the order directing such investment and accumulation.

This is from C. F. C. R. 1874, r. 61.

See R.S.C., O. 22, rr. 14—17, as to investments of money in the Q. B. D. Previously to these rules there was no provision for investment of monies in the Q. B. D.

As to payments for investments, and accounts to which investments are to be credited, see rr. 53 and 54, *supra*.

As to what investments are authorised, see R. S. C., O. 22, r. 17.

Purchase of Exchequer bills or bonds.

70. When money in court is invested in Exchequer bills or Exchequer bonds, and when Exchequer bills or Exchequer bonds are, in pursuance of an order, lodged in court, any principal money or interest which may thereafter be received and paid into the bank in respect of such bills or bonds, or in respect of any such bills or bonds for which the same may be exchanged, shall from time to time, as the same shall be so received and paid into the bank, be also invested by the paymaster, unless such order otherwise directs, or until he receives a written request or notice of a further order to the contrary, in Exchequer bills or Exchequer bonds which shall be placed to the same credit.

This and the next rule are taken from C. F. C. R. 1874, rr. 62 and 63.

Bank to renew Exchequer bills, and to receive principal and interest of securities when paid off.

71. When and so often as any Exchequer bills or other securities deposited at the bank to the credit of the pay office account shall be in course of payment, the bank shall, without any direction from the paymaster, cause all such bills or other securities so in course of payment to be delivered to one of the cashiers of the bank, who is to receive the principal money or interest due thereon, or in the case of Exchequer bills to exchange the same for new bills, if new bills are issued, or otherwise to receive the principal money and interest due on such of the said bills so in course of payment as cannot be exchanged, and pay such interest or principal and interest (as the case may be) into and deposit all such new bills in the bank to the pay office account: and the bank shall forthwith after every such exchange or receipt of principal or interest certify to the paymaster, without any direction from him for that purpose, the numbers, dates, and amounts of the Exchequer bills or other securities so exchanged or paid off, and also the numbers, dates, and amounts of the new bills taken in exchange, and the amount of the interest, or principal money and interest (as the case may be) received on each bill or set of bills or other securities; and upon receiving such certificate the paymaster shall place such new bills and such principal money and interest to the credit in the books at the pay office to which the bills or other securities so exchanged or paid off were placed.

See last note.

Limit of amount to be invested.

72. A sum of money in court less than 40*l.* shall not be invested in securities, except in the cases provided for by the two rules next following, and unless an order directs such investment notwithstanding the smallness of the amount; but such sum if not less than 20*l.* shall be placed on deposit until, with the interest accrued thereon, it shall amount to 40*l.*, and shall then be invested as directed. This rule shall extend to the investment of dividends accruing on securities in court which are directed to be invested.

This rule is from C. F. C. R. 1874. r. 64. The sum of 20*l.* was substituted for 10*l.* by S. C. F. R. Aug. 1892.

As to money on deposit, see rr. 76—85, *infra*.

Investment of money lodged under the Trustee Act, 1893.

73. A sum of money lodged in court as provided in Rule 41, if or so soon as such money and the interest, if any, to be credited in respect thereof shall amount to or exceed 40*l.*, and the dividends accruing on any securities so lodged, if and when they shall amount to or exceed 20*l.*, shall be invested without any order or request in New Consols, and the dividends accruing on such New Consols and all accumulations thereof shall, if or so soon as they amount to 20*l.*, be invested in New Consols.

When it is stated in the schedule to the affidavit made pursuant to rule 41 that it is desired that any money to be lodged in court, and the accumulations thereof, or any dividends to accrue on any securities to be so lodged, should be invested in any description of Government securities, such money, if or so soon as such money and the interest, if any, to be credited in respect thereof shall amount to or exceed 40*l.*, and the dividends accruing on such securities, if or so soon as they shall amount to or exceed 20*l.*, shall be invested accordingly, without any order or further request for that purpose.

rr. 73—77.

Dividends accruing on funds or on investments or accumulations of funds lodged in court under the 32nd section of the Act 36 George III. c. 52, or under the Act 10 & 11 Vict. c. 96, prior to the commencement of the Chancery Funds Rules, 1872, shall, when or so soon as they amount to or exceed 20*l.*, be invested without any request.

Lodgments under 36 George III. c. 52, s. 32, and 10 & 11 Vict. c. 96, prior to 1st Jan. 1894, to be dealt with as if lodged under Trustee Act, 1893.

74. Money or securities lodged in court under the 32nd section of the Act 36 George III. c. 52, or under the 10 & 11 Vict. c. 96, prior to the 1st January, 1894, and securities purchased with such money, or the income thereof, shall, subject to any order affecting the same made prior to the 1st January, 1894, be dealt with in the same manner as if such money or securities had been lodged in court under the 42nd section of the Trustee Act, 1893.

Taken from S. C. F. R. 1893, r. 8.

Investing stayed or discontinued on request.

75. In all cases, upon a request signed by a solicitor acting on behalf of any person claiming to be entitled to or interested in securities in court, that the dividends or interest accruing on any specified securities may not be invested, being at any time left at the pay office, the paymaster shall be at liberty to cease to invest any more dividends or interest accruing on such securities or to place the same on deposit until he has received a copy of a schedule in that behalf.

This is from C. F. C. R. 1874, r. 67.

VIII. MONEY ON DEPOSIT, AND INTEREST THEREON.

Money to be placed on deposit.

76. Subject to the two rules next following all money to be lodged in court in the Chancery Division, including dividends received in respect of securities in court and not otherwise directed to be dealt with, shall be placed on deposit without a request. But money arising by the sale, conversion, or payment off of securities in court in that division shall only be placed on deposit upon a request to that effect.

Compare C. F. C. R. 1874, rr. 68 and 69.

Money on deposit bears interest at 2 per cent. (see C. F. Act, 1872, s. 14 ; and see further as to interest, rr. 81—85, *infra*).

Money not to be placed on deposit in certain cases.

77. Money shall not be placed on deposit in the following cases :

(*a.*) In any cause or matter in the Queen's Bench or Probate, Divorce, and Admiralty Divisions :

(*b.*) When lodged in the Chancery Division under the provisions of Order XXII. or of Rule 26 of Order XXXI. of the Rules of the Supreme Court, 1883 :

(*c.*) When lodged under the standing orders of either House of Parliament, pursuant to the Act 9 & 10 Vict. c. 20, or any Act amending the same, in respect of works or undertakings to be executed under the authority of Parliament, or when lodged under any Rule or Provisional Order made by the Board of Trade :

(*d.*) If lodged prior to the commencement of the Court of Chancery Funds Act, 1872, pursuant to the Copyhold Acts, or to section 69 of the Lands Clauses Consolidation Act, 1845 :

(*e.*) When the amount is less than 20*l.* :

(*f.*) When a payment schedule dealing with the money otherwise than by directing it to be placed on deposit or carried over has been left at the pay office :

(*g.*) When a request that the money shall not be placed on deposit, signed by a solicitor acting on behalf of a person claiming to be entitled to or interested in the money, is left at the pay office: Provided that the person making such request may at any time withdraw the same, and request that the money may be placed on deposit.

Compare C. F. C. R. 1874, rr. 68—73.

"**Pursuant to the Act 9 & 10 Vict. c. 20.**" See the Act and notes, Morg. 49, 50.

When money shall be withdrawn from deposit.

78. Money shall be withdrawn from deposit in the following cases:—

(*a.*) When and to such an amount as the money is by an order directed to be dealt with, otherwise than by carrying over:

(*b.*) When the amount is reduced below £20:

(*c.*) Upon a request signed by a solicitor acting on behalf of a person interested, and countersigned by a registrar or chief clerk, containing a notification that the money is about to be dealt with by an order.

As to the previous practice, see C. F. C. R. 1874, rr. 74, 75.

Time for placing money on deposit.

79. The placing on deposit of money lodged in court shall not be deferred beyond the last day of the month in which it shall be lodged in court, or in the case of money lodged in court on the last day of a month, the placing on deposit shall not be deferred beyond the last day of the following month; and when a request to place money in court on deposit shall be sent to or left at the pay office, the money shall be so placed on the day next following that on which such request shall be so left or received at the pay office.

This is from C. F. C. R. 1874, r. 70.

As to placing on deposit cash arising from conversion of Government securities.

80. When an order directs Government securities to be sold and the whole of the money arising thereby to be placed on deposit, and when such securities are realised by exchange as hereinafter provided, such money shall be deemed to have been placed on deposit (without a request for that purpose) on the day on which such exchange shall be effected.

Compare C. F. C. R. 1874, r. 71; and see C. F. Amended Orders, 1874, r. 13.

No interest computed on a fraction of 1*l.*

81. Interest upon money on deposit shall not be computed on a fraction of 1*l.*

This and the four following rules are from C. F. C. R. 1874, rr. 76—80.

For what periods interest is to be computed.

82. Interest upon money on deposit shall accrue by calendar months, and shall not be computed by any less period than one month. Such interest shall begin on the first day of the calendar month next succeeding that in which the money is placed on deposit, and shall cease from the last day of the calendar month next preceding the day of the withdrawal of the money from deposit.

When interest is to be credited.

83. Interest which has accrued for or during the half-years ending respectively the 31st of March and the 30th of September in every year on money then on deposit shall, on or before the 15th days of the months

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respectively following, be placed by the paymaster to the credit to which such money shall be standing on every such half-yearly day. And when money on deposit is withdrawn from deposit, the interest thereon which has accrued and has not been credited shall be placed to the credit to which the money is then standing.

Mode of calculating interest in certain cases on parts of money withdrawn.

84. When money on deposit consists of sums which have been placed on deposit at different times, and an order is made dealing with the money, and part of such money has to be withdrawn from deposit for the purpose of executing such order, the part or parts of the money dealt with by such order last placed and remaining on deposit at the time of such withdrawal shall, for the purpose of computing interest, be treated as so withdrawn, unless the order otherwise directs.

Placing of interest on deposit.

85. Unless otherwise directed by an order, interest credited on money on deposit shall, when or so soon as it amounts to or exceeds £20, be placed on deposit, and for the purpose of computing interest upon it shall be treated as having been placed on deposit on the last half-yearly day on which any such interest became due.

IX. EXCHANGE OR CONVERSION OF GOVERNMENT SECURITIES AND TRANSACTIONS WITH THE NATIONAL DEBT COMMISSIONERS.

Exchanges of securities in lieu of actual purchases and sales.

86. When Government securities in court are directed to be sold, such securities may be realised by exchange in the pay office books in the manner hereinafter provided. And when money in court is required to be invested in Government securities, such investment may be made by exchange in like manner.

The rules in this part are made in pursuance of the J. A. 1875, s. 30. Compare C. F. C. R. 1874, rr. 81—85.

Manner of recording such exchanges.

87. For the purpose of effecting any such exchange, an account of each description of Government securities shall be kept at the pay office, entitled "exchange accounts," and such accounts shall contain on the one side thereof the amount of securities received in exchange for money, and the amount of money received in exchange for securities, and on the other side thereof the amount of money and securities given in exchange for such securities and moneys respectively. The money value of the securities received or given in exchange under this rule shall be determined by the price of the day next following that on which the paymaster is required or authorised to make the sale or investment; or if the money invested consist of dividends accrued on securities in court, and previously to the accruing thereof, required or authorised to be invested in Government securities, the price of the day next following that on which such dividends shall be placed by the bank to the pay office account; or if no price can be ascertained for such day, then the price of the next following day for which it can be ascertained. The price herein mentioned shall be the bank average price of the Government securities appearing in the account transmitted to the Controller-General of the National Debt Office by the cashiers of the bank, a copy whereof shall be sent daily by the bank to the pay office.

Commission to be charged on exchanges and paid to the Exchequer.

88. Upon every such exchange a commission shall be charged of one-eighth per cent. on the amount of money realised or invested, in lieu of any brokerage provided for by the order or usually charged upon the

sale or purchase of such securities; but no such charge for commission shall in any case be less than sixpence; and unless the payment thereof is otherwise provided for by the order, such commission shall be deducted from the proceeds of the realisation or the amount to be invested respectively, or in case a specific amount of money is to be realised, the commission upon it shall also be realised by the exchange of an additional amount of the securities by which the realisation is to be effected; and when the payment of brokerage is otherwise provided for, the paymaster shall not be required to give effect to any such exchange until such commission has been paid into the bank to the pay office account. Such commission when so paid in or realised and deducted as aforesaid shall be placed to an account in the pay office books for commission on exchanges; and the amount so placed shall from time to time, as the Treasury may direct, be transferred to the account of Her Majesty's Exchequer.

Periodical adjustment of exchange account.

89. The paymaster shall from time to time, but not less than once in every year, prepare and transmit to the National Debt Commissioners a statement of the result of the exchange operations under these rules, showing the total amounts of each description of Government securities purchased by exchange and realised by exchange, respectively; and the total amounts of the cash charged and credited, respectively, in the pay office books as the money value of the securities exchanged. And the difference so arising between the amount of any description of Government securities standing to the credit of the pay office account at the bank and the amount of such securities appearing by the books of the pay office to be in court, and also the difference between the money value nominally paid and nominally received for such securities, shall be forthwith adjusted as follows:—

(*a.*) If such statement shows that the total amount of any description of Government securities purchased by exchange is in excess of the total amount of the same description of securities realised by exchange, the amount of such excess of securities purchased by exchange shall be transferred by the National Debt Commissioners from their account at the bank on behalf of the Supreme Court to the pay office account at the bank. And such transfer of securities shall be treated as a repayment by the said commissioners, out of the money placed in their hands by the paymaster on behalf of the Supreme Court, of the difference between the cash charged and credited respectively in the pay office books in respect of such exchanges, as shown in the said statement.

(*b.*) If such statement shows that the total amount of any description of Government securities purchased by exchange is less than the total amount of the same description of securities realised by exchange, the amount of the excess of securities realised by exchange shall be transferred by the paymaster to the account at the bank of the National Debt Commissioners on behalf of the Supreme Court. And the money value of the securities so transferred (being the difference between the cash charged and credited, respectively, in the pay office books in respect of such exchanges, as shown in the said statement), shall be placed by the National Debt Commissioners to the credit of the account

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kept by them of money placed in their hands by the paymaster on behalf of the Supreme Court.

Adjustment of dividends on Government securities in court.

90. The paymaster shall from time to time prepare and transmit to the National Debt Commissioners a statement showing the amount of the dividends, less income tax, which became payable in the period to which such statement relates, on the Government securities in court (at the closing of the bank books for such dividends) as shown by the pay office books, and the amount of the dividends received in the same period on the Government securities standing to the credit of the pay office account at the bank; and the difference appearing thereby shall be adjusted as follows:—

(*a.*) If the amount of dividends payable shall have exceeded the amount of dividends received, the amount of the difference shall be credited by the National Debt Commissioners to the account kept by them of money placed in their hands by the paymaster on behalf of the Supreme Court.

(*b.*) If the amount of dividends received shall have exceeded the amount of dividends payable, the amount of the difference shall be transferred by the paymaster to the account at the bank of the National Debt Commissioners on behalf of the Supreme Court.

Surplus of money on the pay office account to be transferred to the National Debt Commissioners.

91. When the money to the credit of the pay office account is, in the opinion of the paymaster, in excess of the amount required for the purpose of making current payments, he shall transfer the amount of such excess from the pay office account to the account at the bank of the National Debt Commissioners on behalf of the Supreme Court, and shall notify such transfer to the said commissioners.

Deficiency of money on the pay office account to be made good by National Debt Commissioners.

92. When the money to the credit of the pay office account is, in the opinion of the paymaster, insufficient for the purpose of making current payments, the National Debt Commissioners, upon a request in writing of the paymaster, shall forthwith transfer from their account at the bank on behalf of the Supreme Court to the pay office account the amount of money specified in such request.

National Debt Commissioners to give credit for interest on money on deposit.

93. The paymaster shall, after the 31st March and 30th September in every year, certify to the National Debt Commissioners the amount of interest on money on deposit which has accrued for or during the half years respectively ending on those days; and the National Debt Commissioners, as soon thereafter as may be, shall place such amount to the credit of the account kept by them of money placed in their hands by the paymaster on behalf of the Supreme Court, and shall cause the amount of income tax (if any) chargeable on such interest to be paid to the account at the bank of the Commissioners of inland revenue.

X. CALCULATION OF RESIDUES, EVIDENCE OF LIFE, &c.

Calculations of residues to be made in pay office.

94. For the purpose of ascertaining the amounts of any residue or aliquot part of money or securities dealt with by an order, when such amounts cannot be stated in the payment schedule and are not directed to be certified, the necessary calculations shall be made in the pay office:

Provided that the paymaster may require such calculations to be first stated in a certificate signed by the solicitor of the party interested. rr. 94—99.

This rule obviates the necessity, previously existing, for an affidavit by the solicitor verifying the calculations.

Evidence of life, &c.

95. When any person is entitled, under an order, to receive dividends or other periodical payments from the pay office, and the paymaster requires evidence of life or of the fulfilment of any conditions affecting such payments, such evidence may be furnished by a declaration signed by a solicitor acting on behalf of such person, or by a declaration signed by the person entitled to the payment, and attested by a justice of the peace, commissioner to administer oaths, clerk in holy orders, or notary public; and the paymaster shall act on such evidence unless in any case he thinks fit to require such evidence to be by statutory declaration or affidavit. The paymaster may prescribe, with the approval of the Treasury, the terms in which such declaration or affidavit shall be made, and the forms to be used for that purpose. The provisions of this rule shall apply to orders made before these rules come into operation, notwithstanding any thing as to evidence in such orders contained.

See rr. 47 and 48, *supra*.

Affidavits in other cases.

96. When in carrying into effect the directions of an order evidence is required by the paymaster for any purposes other than those included in the immediately preceding rules, he may receive and act upon an affidavit, or upon a statutory declaration, and every such affidavit or statutory declaration shall be filed in the central office when the paymaster shall consider it necessary.

XI. COPIES OF ORDERS AND OTHER DOCUMENTS FOR AUDIT OFFICE.

Office copy of schedules, &c., to be sent to audit office.

97. An office copy of the schedules to every order in the Chancery Division and in Lunacy, and, when requested, an office copy of any order in the Queen's Bench and Probate, Divorce, and Admiralty Divisions, to be acted upon by the paymaster, shall be transmitted by the proper officer to the audit office; and in case of any amendments being made in any such schedule or order, such office copy shall be likewise amended.

Office copies of certificates and other documents to be sent.

98. An office copy of every certificate or other authority of a master of the Supreme Court, chief clerk, or taxing officer, or of a master in Lunacy, which is to be acted upon by the paymaster, or so much thereof as may be necessary, and an office copy of any certificate, affidavit, or statutory declaration which may be received in evidence by the paymaster, shall, when requested, be transmitted by the proper officer to the audit office.

Semble, the word "taxing officer" includes "district registrar," when costs are taxed in a district registry (*Wilson* v. *Alltree*, 27 C. D. 242).

XII. MISCELLANEOUS.

Paymaster to give certificates of funds in court.

99. The paymaster, upon a request signed by or on behalf of a person claiming to be interested in any funds in court standing to the credit of an

rr. 99—101.

account specified in such request, may, in his discretion, issue a certificate of the amount and description of such funds, and such certificate shall have reference to the morning of the day of the date thereof, and shall not include the transactions of that day, and the paymaster shall notify on such certificate the dates of any orders restraining the transfer, sale, delivery out, or payment, or other dealing with the funds in court to the credit of the account mentioned in such certificate, and whether such orders affect principal or interest, and any charging orders, affecting such funds, of which respectively he has received notice, and the names of the persons to whom notice is to be given, or in whose favour such restraining or charging orders have been made. The paymaster may re-date any such certificate, provided that no alteration in the amount or description of the funds has been made since the certificate was issued. And when a cause or matter has been inserted in the list referred to in rule 101, the fact shall be notified on the certificate relating thereto.

This rule is from C. F. C. R. 1874, r. 87.

"**Any Charging Orders.**"—As to charging orders, see R. S. C., O. 46. Under this rule, notice to the paymaster of a charging order is sufficient without a stop order (*Brereton* v. *Edwards*, 21 Q. B. D. 488).

"**Whether such Orders affect Principal or Interest.**"—See *Mack* v. *Postle*, (1894) 2 Ch. 449, cited under R. S. C., O. 46, r. 13.

Paymaster may issue transcripts of accounts and furnish other information.

100. Upon a request signed by or on behalf of a person claiming to be interested in funds in court, the paymaster may, in his discretion, issue a transcript of the account in his books specified in such request; and if so required by the person to whom it is issued, such transcript shall be authenticated at the audit office. He may also upon a like request supply such other information or issue such certificates with respect to any transactions or dealings with funds in court as may from time to time be required in any particular case.

From C. F. C. R. 1874, rr. 88 and 90. See Chancery Funds Act, 1872, s. 4, *ante*.

List of dormant funds, &c., to be made triennially and published.

101. On or before the 1st day of March in every third year the paymaster shall prepare, in such form and with such particulars as the Treasury may from time to time direct, a list or statement of the accounts in the books of the pay office (other than those referred to in the next following rule) to the credit of which there stood on the 1st day of September then next preceding any funds not less than 50*l*., which have not been dealt with, otherwise than by the continuous investment or placing on deposit of dividends, during the 15 years immediately preceding the last-mentioned date.

The said list or statement shall be filed in the central office, and a copy thereof shall be inserted in the "London Gazette" and exhibited in the several offices of the court.

The paymaster may, in his discretion, give any information respecting any funds in court mentioned in such list or statement upon a request signed by the person applying for such information or by his solicitor. If such request be made by a solicitor, such information shall not be given unless the request states the name and address of the person on whose behalf it is made, and that such person is in the opinion of the applicant beneficially interested in such funds. If such request be made

by any person other than a solicitor, such information shall not be given unless the applicant is able to satisfy the paymaster that the request is such as may in the particular case be properly complied with.

This rule is taken from C. F. C. R. 1874, r. 91. See C. F. Amended Orders, r. 41.

As to applications for information under this rule, see Notice printed at the end of this Part, p. 315.

Payment out of court ordered of part of a dormant fund to the credit of the bankruptcy of a large creditor (*Pratt* v. *Willis*, W. N. (95) 9).

Beneficial Interest.—See R. S. C., O. 22, r. 12B, (n.).

Transfer of small balances to a special account.

102. The paymaster may from time to time carry over to a special account for small balances such balances of money and securities as do not together amount to 5*l*., and on which the money or securities shall not have been dealt with during the preceding five years. When an order dealing with funds carried over under this rule is to be acted upon, the paymaster shall carry back such funds and any dividends accrued thereon to the account from which they were so carried over, and shall deal therewith as directed by such order.

From C. F. C. R. 1874, r. 92.

Titles of accounts not to exceed 36 words.

103. The length of the title of any ledger credit shall not exceed 36 words, exclusive, in the case of a separate account in a cause or matter, of the title of the cause or matter in which such separate account is opened: Provided that such title may be extended beyond 36 words if a sufficient reason be assigned to the satisfaction of the registrar or master of the Supreme Court; and the registrar or master shall in such case add to the instruction to open such credit the words "notwithstanding rule 103;" and provided also that the paymaster may extend any such title if in his opinion a sufficient reason be assigned for so doing. In such title four figures shall be reckoned as one word.

From C. F. C. R. 1874, r. 94.

Outstanding cheques of late accountant-general.

104. Unpaid cheques signed by the late accountant-general, or any of his predecessors, shall be a sufficient authority to the paymaster for making the payments therein purporting to be intended to be made.

Index of documents filed.

105. An index shall be made and kept in the central office of all documents by these rules directed to be filed there.

From C. F. C. R. 1874, r. 95.

Names and addresses of suitors.

106. Upon the request of any person, or of a solicitor acting on behalf of any person, named in an order and entitled to or interested in funds in court, the paymaster shall record, in such manner as he shall consider convenient for reference, the name and address of such person, or of the solicitor for the time being acting on his behalf, and also any change of such address which may be notified to him.

Paymaster's directions to be issued and signed as Treasury may prescribe.

107. The directions of the paymaster for giving effect to these rules shall be prepared and issued in such form and manner as the Treasury may from time to time direct, and shall be signed by such officers as the Treasury may prescribe or approve.

See rr. 49 and 50, *supra*.

rr. 108, 111.

Identification of persons to be paid, &c.

108. It shall be the duty of the paymaster to comply with any instructions which may be given to him by the Treasury as to the means of identifying any person to whom a direction for payment of money or for delivery of securities out of court is issued, when such identification may be deemed necessary.

When stocks or shares of companies or other securities are converted.

109. Whenever any amount or number of stock, shares, or other security in court (in this rule referred to as the original security), is converted into any other stock, shares, or other security (in this rule referred to as the substituted security), so that the description thereof will differ from the description given of the original security in the order or other authority under which the paymaster acts respecting the same, the paymaster shall write off from the account to which the same may be standing the original security so converted, and shall place to the same account a proportionate part of the substituted security; and except in so far as any original security may be affected by any order brought to the pay office in due time for that purpose, the paymaster shall, as far as may be practicable, give effect to every part of any order or other authority under which he has been acting which shall refer to any such original security so converted as aforesaid, or the dividends thereon, as if it referred to the substituted security or the dividends thereon. Provided that payments of income shall not be made in pursuance hereof, without an order, in any case where the substituted security is a terminable annuity, unless such terminable annuity is based upon a deduction for sinking fund intended to replace the capital of the original security.

When allotments of new stock are made by companies.

110. Whenever any allotment letters, scrip allotments, or other securities are allotted or assigned in respect of any sums of stock, or of any shares or other security in court, such allotment letters, scrip allotments, or other securities (excepting such of them, if any, as may be affected by any order of which the paymaster has notice) shall be sold. The money to arise by the said sale shall be paid (without deduction for brokerage) by the broker to the pay office account at the Bank and placed in the books of the pay office to the respective accounts to which the said stock or shares or other security are standing, in respect of which such allotment letters, scrip allotments, or other securities have been allotted or assigned.

Rules not to apply to district registries.

111. These rules shall apply to funds in court or hereafter lodged in court in the district registries in Liverpool and Manchester; but shall not apply in other district registries.

Amended, so as to include the provisions as to Liverpool and Manchester district registries originally combined in S. C. F. R., 1887.

It was probably intended that these rules should not apply to funds in court in cases where the order was made by a district registrar, but the court is bound to act on the certificate of the district registrar where the court has ordered taxation of costs to be made in the district registry. (*Wilson* v. *Alltree*, 27 C. D. 242.)

(Signed) HERSCHELL, C.

December 4th, 1894.

We certify that these rules are made with the concurrence of the Commissioners of her Majesty's Treasury.

(Signed) RICHD. K. CAUSTON.
W. A. MCARTHUR.

APPENDIX.

FORM NO. 1.

[*Lodgment Schedule, referred to in Rule* 5.]

Appendix, Form No. 1.

Lodgment Schedule.

In the High Court of Justice, Chancery Division.

Date of Order, , 18 .

Title of cause or matter 18 . A. No. .

Ledger credit. [If same as title of cause, state "As above."]

Particulars of Funds to be lodged.	Person to make the Lodgment.	Amount.	
		Money.	Securities.

[See specimen entries on next two pages.]

Appendix, Form No. 1.

Specimen Lodgment Schedules.

In the High Court of Justice, Chancery Division. 21st July, 18 .

Re Morton, deceased, Morton *v.* Matthews. 1881. M. 391.

Ledger credit. As above.

Particulars of Funds to be lodged.	Person to make the Lodgment.	Amounts.					
		Money.			Securities.		
		£	*s.*	*d.*	£	*s.*	*d.*
Balance to be certified on passing final account as receiver.	Edmund James White (the receiver).						
Balance to be certified of the 87*l.* 5*s.* 9*d.* due from him as executor after retaining his costs.	James Matthews (defendant).						

In the High Court of Justice, Chancery Division. 15th June, 18 .

A. *v.* B. 1883. A. 16.

Ledger Credit. As above.

Particulars of Funds to be lodged.	Person to make the Lodgment.	Amounts.					
		Money.			Securities.		
		£	*s.*	*d.*	£	*s.*	*d.*
New Consols . .	J. A. and J. B.				15,000	—	—
Great Western Railway 4 p. c. Debenture Stock.	Do. . .				1,500	—	—
Balance of cash to be certified. Invest and accumulate in New Consols.	J. B.						

Appendix, Forms Nos. 1, 2.

[*Specimen Lodgment Schedule of purchase-money to be signed by a chief clerk.*]

In the High Court of Justice, Chancery Division.

A. *v.* B. 1885. A. 16.

Ledger credit. The said action. Proceeds of sale of real estate.

Lodgment Schedule.

Purchase-money to be lodged pursuant to order dated 31st July, 18 .

Particulars of Money to be lodged.	Person to make the lodgment.	Amount. £	s.	d.
Deposit	T. A. the auctioneer . .	20	0	0
Balance of purchase-money and interest	W. K. the purchaser	195	0	0
Invest and accumulate amounts lodged in New Consols				
The above funds not to be paid out, transferred, or dealt with, without notice to the said W. K. . . .				
	£	215	0	0

Total amount in words. } Two hundred and fifteen pounds.

Dated this 10th day of August, 1886.

, *Chief Clerk.*

FORM NO. 2.

[*Payment Schedule, referred to in Rule* 6.]

Payment Schedule.

In the High Court of Justice, Chancery Division.

Date of Order, 18

Title of cause or matter 18 . A. No.

Ledger credit. [If same as title of cause, state "As above."]

Funds in court.

Particulars of payments, transfers, or other operations ordered.	Payees and transferees, or separate accounts.	Amounts. Money.	Securities.

[See specimen entries on next two pages.]

Appendix, Form No. 2.

Specimen Payment Schedules.

In the High Court of Justice, Chancery Division. 2nd August, 18 .

B. *v.* D. 1883. B. 165.

Ledger credit. As above.

Funds in court { 730*l.* 7*s.* 7*d.* New Consols. 10*l.* 13*s.* 2*d.* Cash.

Particulars of payments, transfers, or other operations ordered.	Payees and transferees or separate accounts.	Amounts.					
		Money.			Securities.		
		£	*s.*	*d.*	£	*s.*	*d.*
Pay	John Park . .	5	6	7			
Sell New Consols .		—	—	—	730	7	7
Out of proceeds and balance of funds pay :—							
Costs of petitioners to be taxed.							
Legacy duty in respect of fund in court.							
Divide residue in fourths, and pay as under :—							
One-fourth . .	John Smith (Petitioner).						
One-fourth . .	Emma Joy (Petitioner), wife of Wm. Joy, on her separate receipt.						
Out of one-fourth. Residue of such one-fourth.	Eliza Joy (widow) Edward Sparkes	79	10	6			
Carry over one-fourth. Invest and accumulate in New Consols.	Separate account of William Peters (plaintiff).						

Appendix, Form No. 2.

In the High Court of Justice, Chancery Division. 4th September, 18 .

Smith *v.* Williams. 1871. S. 103.

Ledger credit. The said cause. Trust legacy of 800*l.* for Charles Pearce and Susan his wife and their children and incumbrancers.

Funds in court { 812*l.* 11*s.* New Consols. 50*l.* Money on deposit. 48*l.* 1*s.* 3*d.* Cash.

Particulars of payments, transfers, or other operations ordered.	Payees and transferees or separate accounts.	Amounts.					
		Money.			Securities.		
		£	*s.*	*d.*	£	*s.*	*d.*
Sell New Consols .		—	—	—	812	11	0
Pay . . .	David Shore Charles Weaver	45	6	2			
Pay taxed costs of George Turner.							
Pay residue of funds as under :—							
One-fifth . .	George Turner.						
Out of one-fifth .	James Watson .	100	0	0			
Residue of last-named one-fifth.	Birmingham Banking Company, mortgagees.						
Out of one-fifth .	Henry Earle (as mortgagee).	140	8	4			
Out of same one-fifth, interest on 100*l.* at 5*l.* per cent. per annum from 18 to day for payment.	The same.						
Residue of last-named one-fifth	Robert Wild and Joseph Hunter, trustees of Arthur Turner.						
One-fifth . .	Matthew Field.						
One-fifth . .	William Long.						

Appendix, Form No. 3.

FORM NO. 3.

[*Combined Lodgment and Payment Schedule, referred to in Rule* 8.]

Lodgment and Payment Schedule.

In the High Court of Justice, Chancery Division.

Date of Order, 18 .

Title of cause or matter 18 . *A.* No.

Ledger credit. [If same as title of cause, state "As above."]

I.—Lodgment.

Particulars of Funds to be lodged.	Person to make the lodgment.	Amounts.	
		Money.	Securities.

II.—Payment.

Funds to be dealt with { £ Consolidated 3 per cent. Annuities. £ Cash. Funds to be lodged as above.

Particulars of payments, transfers, or other operations ordered.	Payees, transferees, or separate accounts.	Amounts.	
		Money.	Securities.

FORM NO. 4.

[*Certificate of ascertained sums, referred to in Rule* 11.]

HIGH COURT OF JUSTICE.—CHANCERY DIVISION.

Title of cause or matter

Ledger credit. [If same as title of cause, state "As above."]

I certify that under an order dated , 18 , the sums stated in the Schedule subjoined hereto, amounting in the whole to have been ascertained to be the sums payable under the said order to the persons respectively named, in respect of [*state in what character paid*].

Dated this day of , 18 .

{ Chief Clerk [*or* Taxing Officer].

SCHEDULE.

Name.	Address (if ascertained).	Amount to be paid.

FORM NO. 5.

[*Certificate of taxed costs, referred to in Rule* 12.]

HIGH COURT OF JUSTICE.—CHANCERY DIVISION.

Title of cause or matter

Ledger credit. [If same as title of cause, state "As above."]

In pursuance of an Order dated , 18 , I have been attended by the solicitors for and I certify that I have taxed the costs specified in the Schedule subjoined hereto, directed to be taxed by the said Order, at the sums respectively stated in the Schedule, which sums, with the fees of taxation specified (if any), amount to the total sum of .

Dated this day of , 18 .

Taxing Officer.

SCHEDULE.

Costs of	Payable to		Amount of taxed costs and Fees.
	Name.	Address.	
		Total . . £	

Appendix, Form No. 6.

FORM No. 6.

[*Certificate of execution of documents, referred to in Rule* 18.]

HIGH COURT OF JUSTICE.—CHANCERY DIVISION.

Title of cause or matter

Ledger credit. [If same as title of cause, state "As above."]

An Order of the Court, dated , 18 , having directed that the under-mentioned dealings with the funds specified shall be contingent upon the execution of [*here describe the document to be executed*], I hereby certify (pursuant to Rule 18 of the Supreme Court Funds Rules) that the said document has been executed as directed in the said Order.

Whether payment, transfer, or other operation; and description of securities (if any).	Name of payee, transferee, or separate account.	Amounts to be dealt with.	
		Money.	Securities.
	Totals . . £		

Amounts in words. [*Total only of each money column.*] { Money / Securities

Dated this day of , 18 .

{ Chief Clerk [*or* Master in Lunacy].

FORM No. 7.

[*Order for Payment in Queen's Bench and Probate, Divorce, and Admiralty Divisions, referred to in Rule* 28.]

High Court of Justice, Division.
Title of cause or matter *v.* 18 . *A.* No.

Ledger credit. [Name of ship in Admiralty actions.]

Date 18 .

The Paymaster-General is hereby directed to make the payments specified below out of the money standing in his books to the credit of the above cause or matter.

Name of the person to whom, and also of the person (if any) upon whose authority, payment is to be made.		Particulars.	Amount to be paid.
Person to be paid. (*Christian name to precede surname.*)	Person (if any) to give authority for payment.		

Total amount in words

(*Signature*)

FORM No. 8.

[*Request for Lodgment of Money in Chancery Division, referred to in Rule* 30.]

HIGH COURT OF JUSTICE.—CHANCERY DIVISION.

I.—Request for Direction for Lodgment.

Title of cause or matter *v.* 18 . *A.* No.
Ledger credit to which lodged. } [If same as title of cause, state "As above."]
Further particulars (if any) required to be stated
The paymaster is hereby requested to issue a direction to the bank to

Appendix, Forms Nos. 8, 9.

receive from the sum of £ for the ledger credit in the books of the pay office above specified.

(*Signature*)

[*Note.*—The above request should show the name of the party on whose behalf the money is paid in (see 29 Sol. Jo. pp. 141, 282).]

II.—Paymaster's Direction for Lodgment.

To the agent of the Bank of England (Law Courts Branch).

Please receive the above-stated sum, and place it to the account of the Paymaster-General for the time being for and on behalf of the Supreme Court of Judicature.

(*Signature*)
(*Date*) 18 .

III.—Bank Certificate of Receipt.

To the Assistant Paymaster-General.
Bank of England 18 .

The above-stated sum has been this day received.

(*Signature*)

FORM NO. 9.

[*Request for Lodgment or Transfer of Securities in Chancery Division, referred to in Rule* 30.]

HIGH COURT OF JUSTICE.—CHANCERY DIVISION.

I.—Request for Direction for Lodgment or Transfer of Securities.

Title of cause or matter 18 . *A.* No.

Ledger credit to which lodged. } [If same as title of cause, state "As above."]

Authority is hereby requested for the lodgment or transfer to the account of the Paymaster-General for and on behalf of the Supreme Court of Judicature of the securities mentioned below, for the ledger credit in the books of the Pay Office above specified.

To be lodged or transferred by

Description and amount of securities

Date of order (if any) 18 .

(*Signature*)

[See note to Form 8, *supra.*]

II.—Paymaster's Direction for Lodgment or Transfer.

Authority is hereby given for the lodgment or transfer of the above-mentioned securities to the account of the Paymaster General for the time being for and on behalf of the Supreme Court of Judicature.

(*Signature*)
(*Date*) 18

Appendix, Forms Nos. 9, 10.

III.—Certificate of Lodgment or Transfer.

Address . Date 18 .

It is hereby certified that in accordance with the above authority the securities herein mentioned have this day been lodged or transferred to the account of the Paymaster-General.

(*Signature*)

N.B.—Under the Supreme Court Funds Rules made in pursuance of Acts of Parliament, the bank or other company in whose books the transfer herein authorised is made, is required to certify such transfer hereon, and to return this document to the Assistant Paymaster-General, Royal Courts of Justice, London.

FORM NO. 10.

[*Request for Lodgment in Chancery Division, under Orders XXII. and XXXI., referred to in Rule* 30.]

HIGH COURT OF JUSTICE.—CHANCERY DIVISION.

I.—Request for Lodgment of Money under Order XXII. or Rule 26 of Order XXXI.

Title of cause or matter *v.* 18 . *A.* No.

Ledger credit to which lodged. } [If same as title of cause, state "As above."]

The paymaster is requested to issue a direction to the bank to receive £ ; which amount is paid in*

(*Signature*)

* Insert one of the following statements, in accordance with the circumstances :—

(A.) "on behalf of defendant [*state name*] in satisfaction of claim of above-named" [*state name of party*] (*or* "with defence setting up tender").

(B.) "on behalf of defendant [*state name*] against claim of above-named" [*state name of party*] "with defence denying liability."

[A plaintiff who is defendant to a counterclaim may pay money into court under R. S. C., O. XXII., r. 9 (*Hutchinson* v. *Barker*, 71 L. T. 625).]

(C.) "to security for costs account on behalf of" [*state name of party, and whether plaintiff or defendant*].

[See note to Form 8, *supra.*]

II.—Paymaster's Direction for Lodgment.

[Same as in Form 8, *supra.*]

III.—Bank Certificate of Receipt

[Same as in Form 8, *supra.*]

Appendix, Form No. 11.

FORM NO. 11.

[*Request for Lodgment in Queen's Bench Division, referred to in Rule* 32.]

HIGH COURT OF JUSTICE.—QUEEN'S BENCH DIVISION.

I.—Request for Lodgment of Money.

Title of cause or matter *v.* 18 . *A.* No.

To the Agent of the Bank of England (Law Courts Branch).

Please receive £ for the account of the Paymaster-General for the time being for and on behalf of the Supreme Court of Judicature which amount is paid in*

(*Signature*)

Name of solicitor on the other side.

Solicitor for the

(*Date*) 18 .

* Insert one of the following statements, in accordance with the circumstances:—

(A.) "on behalf of defendant [*state name*] in satisfaction of claim of above-named" [*state name of party*] (*or* "with defence setting up tender").

(B.) "on behalf of defendant [*state name*] against claim of above-named" [*state name of party*], "with defence denying liability."

(C.) "to security for costs account on behalf of" [*state name of party, and whether plaintiff or defendant*].

(D.) if lodged in pursuance of an order, or otherwise than as above, state nature and date of authority. For instance:—"Under order dated day of 18 ," *or* "On notice of appeal [in bankruptcy], dated day of 18 ."

[See note to form of request in Form 8, *supra*.]

II.—Bank Certificate of Receipt.

[Same as in Form 8, *supra*.]

FORM NO. 12.

[*Request for Lodgment in Probate, Divorce, and Admiralty Division, referred to in Rule* 34.]

HIGH COURT OF JUSTICE.—PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

I.—Request for Authority for Lodgment.

Title of cause or matter *v.* 18 . *A.* No.

Ledger credit. [Name of ship in Admiralty actions.]

To the registrar.

I request authority for the lodgment of £ at the Bank of England; such lodgment being for *

(*Signature*)

* State here such particulars as may be required.

II.—Authority for Lodgment.

[Same form as "Paymaster's Direction for Lodgment," in Form 8.]

III.—Bank Certificate of Receipt.

[Same form as in Form 8, *supra*.]

FORM NO. 13.

[*Notice of Appropriation of Money lodged in Queen's Bench Division under Order XIV., referred to in Rule* 43.]

HIGH COURT OF JUSTICE.—QUEEN'S BENCH DIVISION.

Notice of Appropriation (under Rule 43 of the Supreme Court Funds Rules) of Money lodged under Order XIV.

Title of cause or matter *v.* 18 . *A.* No.

To the Assistant Paymaster-General.

Date , 18

Take notice that £ of the money lodged in court in the above action under order dated , 18 , is appropriated by the defendant

Appendix, Forms Nos. 13, 14 (A).

[*state name of party*], in respect of the plaintiff's claim, as under viz. :—*

(*Signature*)

* Insert one of the following statements, as may be intended :—

(A.) "in satisfaction of claim of plaintiff" [*state name of party*].
(B.) "against claim of plaintiff" [*state name of party*] "with a defence denying liability."

FORM NO. 14 (A).

Request for Payment of Money lodged "in satisfaction," referred to in Rule 44 (A).]

HIGH COURT OF JUSTICE DIVISION.

Request for Payment of Money lodged, or appropriated, in satisfaction of Claim [under Rule 5 or Rule 11 of Order XXII.].

Title of cause or matter *v.* 18 . *A.* No.

Ledger credit [In Chancery Division]. } [If same as title of cause, state "As above."]

To the Assistant Paymaster-General.

I hereby request that payment of the sum of £ paid in in the above action may be made to *

(*Signature of witness*) (*Signature*)
(*Address*) (*Address*)
(*Occupation*) (*Date*) , 18 .

* N.B.—If payment is to be made to the plaintiff's solicitor, the plaintiff must himself sign the request, and insert therein the words "*the solicitor to me, the plaintiff*" (*naming such solicitor*); but if payment is to be made to the plaintiff in person, the request may be signed either by the plaintiff, who should insert "*me, the plaintiff*," or by the solicitor of the plaintiff, who must insert "*the plaintiff*" (*naming him*). Payment will be made by a crossed cheque or crossed form of receipt, which must be passed through a bank.

FORM NO. 14 (B).

[*Request for Payment of Money lodged "against Claim," referred to in Rule 44 (B).*]

HIGH COURT OF JUSTICE DIVISION.

Request for Payment of Money lodged or appropriated against Claim, with Defence denying Liability [under Rule 6 or Rule 11 of Order XXII.].

Title of cause or matter *v.* 18 . *A.* No.

Ledger credit. / [In Chancery Division]. } [If same as title of cause, state "As above."]

To the Assistant Paymaster-General.

I hereby notify that the sum of £ paid in in the above action has been accepted by the plaintiff in satisfaction of the claim in respect of which it is paid in, and I declare that due notice has been given of such acceptance thereof. And I request that payment of the said sum may be made to *

(*Signature of Witness*) (*Signature*)
(*Address*) (*Address*)
(*Occupation*) (*Date*) , 18 .

* N.B.—If payment is to be made to the plaintiff's solicitor, the plaintiff must himself sign the request, and insert therein the words "*the solicitor to me, the plaintiff*" (*naming such solicitor*); but if payment is to be made to the plaintiff in person, the request may be signed either by the plaintiff, who should insert "*me, the plaintiff*," or by the solicitor of the plaintiff, who must insert "*the plaintiff*" (*naming him*). Payment will be made by a crossed cheque or crossed form of receipt, which must be passed through a bank.

FORM NO. 14 (C).

[*Certificate as to person entitled to Money lodged "as security for Costs," referred to in Rule 44 (C).*]

HIGH COURT OF JUSTICE DIVISION.

Title of cause or matter in which the money was originally lodged. } *v.* 18 . *A.* No.

Ledger credit. [If same as title of cause, state "As above."]

In pursuance of Rule 44 (C) of the Supreme Court Funds Rules, and Rule 27A of Order XXXI. of the Rules of the Supreme Court, October, 1884, I certify that [*name of person to be paid, and whether as plaintiff or defendant, or as solicitor to plaintiff or defendant*], is or are entitled to payment of the total sum of £ lodged in Court in the above cause or matter as under, by or on behalf of the [*plaintiff or defendant*]

Appendix, Forms Nos. 14 (C), 15.

to a security for costs account under Rule 26 of Order XXXI. of the Rules of the Supreme Court, 1883, viz. :—

On 18 £
On 18 £

Dated this day of 18 .
(*Signature*)
(*Title of office*)

N.B.—The person applying for payment may be required to produce the receipt of the Bank of England for the lodgment of the amount.

FORM NO. 15.

[*Declaration (referred to in Rule* 62) *to be made by the Widow or next of kin of a person who has died intestate, when letters of administration have not been taken out, and when the total assets of the estate of the deceased have not exceeded the value of* £100.]

[*Short title of cause or matter with the reference to the record.*]

I [*name of applicant*] solemnly declare that I am the [*degree of relationship*] and next or one of the next of kin of [*name of deceased*], who died on 18 , and that I am entitled to take out administration to his estate, and to receive the sum of £ directed to be paid to him by the Order dated 18 .

And I further declare that the total value of the assets of the deceased, including the above sum, does not exceed £100; and I certify that the death-bed and funeral expenses of the deceased have been paid. And I make this solemn declaration conscientiously believing the same to be true.

(*Signature of applicant*)
(*Address*)

Declared before me this 18

Magistrate of
or
Minister of
or
Commissioner to administer oaths

We certify that the person who has signed the above declaration is personally known to us, and that we believe his or her statement to be true.

To be signed by two householders, resident in the parish.

I certify that the persons whose signatures are last above subscribed are resident householders in this parish.

Minister in the parish of

FORM No. 16. Appendix, Form No. 16.

[*Request for Lodgment without an affidavit under the Trustee Act*, 1893, *and Certificate of Commissioners of Inland Revenue to be furnished therewith, referred to in Rule* 41.]

TRUSTEE ACT, 1893—*Legacy* (or *Share of Residue*) *of E. F. under the Will* (or *Intestacy*) *of C. D.*

A. B., the executor of the will (*or* administrator of the estate) of C. D., deceased, whose will was proved (*or* of whose effects letters of administration were granted) on the day of , proposes to lodge in court to the credit of "Legacy to (*or* share of residue of) E. F., an infant (*or* beyond seas) under the will (*or* intestacy) of C. D.," the sum of £ * (*or* the following securities representing), the full amount (*or* part) of such legacy (*or* share of residue) to which the said E. F. is absolutely entitled [*describe securities, if any, which must be such as the Paymaster can properly accept*].

Certificate of Commissioners of Inland Revenue (*to accompany above Request*).

(*a*) If duty has been paid.

Reg. of the year 18 . Fo. .

I certify that the sum of £ was paid on the day of for legacy duty, at the rate of per cent. in respect of the above-mentioned [*state amount of money or describe securities*] payable to , described as a of the deceased.

Dated the day of .

By order of the Commissioners of Inland Revenue.

(Signed)

(*b*) If no duty is chargeable.

Reg. of the year 18 . Fo. .

I certify that no legacy duty is chargeable in respect of the above-mentioned [*state amount of money or describe securities*] payable to E. F., described as a of the deceased, inasmuch as such sum is (*or* such securities are) stated to be part of the personal estate of the deceased, upon the value whereof stamp duty has been paid under section 27 (*or* 33) of the 44 Vict. c. 12, and therefore exempt from legacy duty under section 41 (*or* 35) of that Act.

Dated the day of .

By order of the Commissioners of Inland Revenue.

(Signed)

* N.B.—No deduction for costs and expenses must be made from the amount to be paid in.

Note.—In addition to the above Forms there are numerous other Forms in use in the Pay Office, a list of which can be obtained at the Inland Revenue Office, Royal Courts of Justice, Room 2.

SUPREME COURT FUNDS RULE (OCTOBER), 1884.

[This rule, which was dated 14th August, 1884, and came into operation on the 24th October, 1884, is now embodied in paragraph (C) of rule 44 of the S. C. F. R. 1894, *ante*.]

SUPREME COURT (DISTRICT REGISTRY) FUNDS RULES, 1887.

[The provisions of these rules, which were dated 12th August, 1887, and came into operation on the 1st October, 1887, are now embodied in the Supreme Court Funds Rules, 1894, *ante*.]

ORDERS UNDER THE SUPREME COURT (FUNDS, &c.) ACT, 1883.

15TH FEBRUARY, 1884.

Orders, 15 Feb., 1884.

I, Roundell, Earl of Selborne, Lord High Chancellor of Great Britain, by virtue of the 3rd section of the Supreme Court of Judicature (Funds, &c.) Act, 1883, and all other powers enabling me in that behalf, and with the concurrence of the Treasury, do hereby direct that all moneys in court, or to be hereafter paid into court, in the Queen's Bench Division of the High Court of Justice, and all securities in court placed, or to be placed, to the credit of any cause, matter, or account in the said division, shall be transferred, or paid, or placed (as the case may be) to the account or credit of the Paymaster-General for and on behalf of the Supreme Court of Judicature; and that this order shall come into operation immediately after the 29th day of February, 1884.

The 15th day of February, 1884.

(Signed) SELBORNE, C.

We concur in the above order—

(Signed) R. W. DUFF,
HERBERT J. GLADSTONE,
Lords Commissioners of Her Majesty's Treasury.

I, Roundell, Earl of Selborne, Lord High Chancellor of Great Britain, by virtue of the 3rd section of the Supreme Court of Judicature (Funds, &c.) Act, 1883, and all other powers enabling me in that behalf, and with

the concurrence of the Treasury, do hereby direct that all moneys in court, or to be hereafter paid into court, in the Probate Divorce and Admiralty Division of the High Court of Justice, and all securities in court placed, or to be placed, to the credit of any cause, matter, or account in the said division, shall be transferred, or paid, or placed (as the case may be) to the account or credit of the Paymaster-General for and on behalf of the Supreme Court of Judicature; and that this order shall come into operation immediately after the 29th day of February, 1884.

(Signed) SELBORNE, C.

We concur in the above order—

(Signed) R. W. DUFF,
HERBERT J. GLADSTONE,
Lords Commissioners of Her Majesty's Treasury.

SUPREME COURT FUNDS RULES (MARCH), 1888.

[This rule, which was dated 1st March, 1888, and came into operation from and after the 5th March, 1888, is now embodied in the Supreme Court Funds Rules, 1894, r. 61, *ante*.]

Sup. Court Funds Rules, March, 1888.

SUPREME COURT FUNDS RULES, 1893.

[These rules, which were dated 20th December, 1893, and came into operation on the 1st January, 1894, are now embodied in the Supreme Court Funds Rules, 1894, *ante*.]

Regulations, Dec., 1886.

PAY OFFICE REGULATIONS FOR THE INFORMATION OF APPLICANTS.

[*N.B.—The following Regulations will be subject to variation in exceptional cases.*]

Lodgments in Court :—

For cash, the directions for lodgment will be ready not later than the afternoon of the *day following* the receipt of the schedule or request.

For securities, the directions for lodgment will be ready the *second* day following the receipt of the schedule or request.

[NOTE.—Lodgment directions may be applied for and sent by post.]

Investments in Securities :—

Government securities purchased will be placed to the credit of the suitor's account *four days* after the money is available.

Instructions for the purchase of other securities will be given to the broker on the *day following* that on which the money is available ; and the securities will ordinarily be placed to the credit of the suitor's account in about *four days* afterwards ; subject to any unavoidable delay in completing the deeds, or in obtaining the particular security.

[NOTE.—This will not apply to investments of accumulated dividends.]

Sales of Securities :—

The proceeds of Government Securities will be placed to the credit of the suitor's account *four days* after the receipt of the request for the sale.

Instructions for the sale of other securities will be given to the broker on the *day following* the receipt of the request ; and the proceeds will ordinarily be placed to the credit of the suitor's account in about *four days* afterwards ; subject to any unavoidable delay in completing the deeds, or in effecting the sale.

[NOTE.—Requests for sales may be sent by post.]

Transfers of Securities out of Court :—

Transfers of Government Securities will, in ordinary course, be completed at the Bank of England in *four clear days* after the application has been left at the Pay Office.

Directions for the transfer of other securities will be ready on the *second* day following the delivery in the Pay Office of the completed deed.

Delivery of Bonds, Boxes, &c. :—

Directions will be ready on the *second* day after the receipt of the application (or of the schedule).

Delivery of Cheques :—

Cheques for Principal Moneys will, as a rule, be ready *within a week* of the receipt of the schedule or other authority, or of the completion of necessary previous transactions or conditions, if any.

Cheques for Dividends on Government Securities will be ready on the usual days for payment of dividends at the Bank of England (subject to possible delay on the occasion of first payments).

Cheques for Dividends on other Securities will be ready *within a*

week after the dividends have been placed to the Pay Office account at the Bank of England.

The hours of delivery are as under :—

Except in the long vacation.	Daily (Saturdays excepted), 10.30 a.m. to 3.30 p.m. Saturdays, 10.30 a.m. to 2 p.m.
In the long vacation.	Daily (Saturdays excepted), 11 a.m. to 3 p.m. Saturdays, 11 a.m. to 2 p.m.

Remittances by Post :—

Cheques sent by post (under rule 48 of the Supreme Court Funds Rules, 1894) will ordinarily be posted on the day on which the written request (or evidence of life, &c., in the case of periodical payments), is received at the Pay Office ; provided the application is correct and complete in form.

Powers of Attorney :—

Will be ready for delivery on the *third* day following that on which they are bespoken. They may be bespoken by a London solicitor, or a London banker, or by the grantor (if duly identified).

All powers for receipt of funds must be prepared in the Pay Office and on the prescribed form. No general powers can be accepted for this purpose.

Certificates of Funds :—

Will be ready on the *second* day after they have been bespoken ; but merely *re-dated* certificates (when back-dated not less than two days) will be ready the day after they have been left.

Negative Certificates :—

Will be ready on the *second* day after that on which they are bespoken, but will always be back-dated four days.

Transcripts of Accounts :—

Transcripts of accounts will, in ordinary cases, be completed *within one week* of the day on which they have been applied for ; but this period will be liable to extension when the transcript to be completed covers a period of more than two years.

Transcripts required for the use of Masters and other officers of the court will have precedence.

When so requested, the prices at which securities have been purchased or realised will be inserted in the transcripts.

All transcripts of accounts should be left at the Pay Office to be completed at least once in each year (when possible, during the long vacation).

Dormant Funds (*i.e.*, Funds not dealt with for more than 15 years) :—

Applications for information (with the necessary stamp as below) must be in writing, and must satisfy the conditions of rule 101 of the Supreme Court Funds Rules, 1886.

Applicants should clearly understand that the only information which it is within the power of this Department to furnish is,—(1) the amount of a particular fund ; (2) the date of any Order dealing therewith.

[See notice of March, 1896, *infra*.]

Verbal Information :—

Verbal information as to funds in court will not be given, except by special leave of the Paymaster, or Deputy Paymaster, or of the Principal of each branch.

Regulations, Dec., 1886.

Forms can be obtained in rooms Nos. 6, 419, and 420. Deviations from the authorised Forms cannot be allowed.

Stamps:—

The Stamps required on Pay Office documents are as under:—

	s.	*d.*	
Certificate of funds including request	1	0	Impressed on request.
Transcript of account	2	0	Impressed on *each* opening.
Request to pay, lodge, transfer, or deposit in court, or to pay out funds (except when the lodgment, payment, &c., has been directed by an order) or money in addition to the amount directed by an order to be paid	1	0	Impressed on request.
Request for information as to dormant funds (Rule 101)	2	6	Adhesive or impressed.
Request for information in writing in respect of any money, funds, or securities, or any transaction in the Pay Office	1	0	Adhesive or impressed.
Office copy of schedule to affidavit under Trustee Act, 1893	1	0	Impressed on office copy.
Power of Attorney.—*Fee Stamp for preparation**	3	0	
Power of Attorney.—*Revenue stamps*:—			
For any periodical payment (including dividends) not exceeding the annual sum of 10*l.*	5	0	
For any periodical payment (including dividends) exceeding the annual sum of 10*l.*	10	0	
For any principal sum not exceeding 20*l.*	5	0	Impressed on power.
For any principal sum exceeding 20*l.*	10	0	
Any composite power (*i.e.*, a power for the receipt of any amount and of any periodical payment)	10	0	
There will be no powers exempt from duty, and no duty under	5	0	

* This stamp is in addition to the Revenue Stamp, but is not required in Lunacy cases.

NOTICE TO PERSONS REQUIRING INFORMATION RESPECTING THE ACCOUNTS OF UNCLAIMED FUNDS IN THE BOOKS OF THE SUPREME COURT PAY OFFICE. (SUPPLEMENT TO "LONDON GAZETTE," 2ND MARCH, 1899.)

Pay Office, Supreme Court of Judicature,

Royal Courts of Justice, March 1, 1899.

Notice as to Unclaimed Funds.

THE Supreme Court Funds Rules of 1894 provide that "On or before the 1st day of March in every third year the Paymaster shall prepare, in such form and with such particulars as the Treasury may from time to time direct, a list or statement of the accounts in the books of the Pay Office to the credit of which there stood on the 1st day of September then next preceding any funds not less than £50, which have not been dealt with, otherwise than by the continuous investment or placing on deposit of dividends, during the 15 years immediately preceding the last-mentioned date. The said list or statement shall be filed in the Central Office, and a copy thereof shall be inserted in the *London Gazette* and exhibited in the several Offices of the Court." (Rule 101.)

In pursuance of the above Rule, the following Alphabetical List of Accounts that have *not* been dealt with *since 1st September*, 1883 (with cross-references to the sub-titles of the several accounts), is published for general information.

In order to remove misconception, it may be stated that a large majority of the funds mentioned in the list are of small amount; that one-half do not exceed £150, and that only one-sixteenth exceed £1,000.

The only authorized list of such funds is that included in the present Supplement to the *London Gazette*.*

The lists of "next-of-kin," &c., issued by various persons, are not official publications; and it is recommended that independent advice should be obtained before making a payment to any agency for information purporting to relate to unclaimed money in Court.

The public are cautioned against relying upon the statements of persons styling themselves "unclaimed money agents," at home or abroad, and professing to act on behalf of the Court of Chancery. The Supreme Court of Judicature has no such agents.

Attention is directed to the following particulars as to the means of

* Copies may be obtained on application to Messrs. Harrison and Sons, 47, St. Martin's Lane, London, W.C., at the price of One Shilling each. Applications for copies to be sent abroad must enclose 4d. in stamps to cover postage, in addition to the cost of the *Gazette*.

Notice as to Unclaimed Funds.

obtaining official information relating to the Funds in Court included in the following List :—

1. The Pay Office being solely a financial department has no record of the origin or details of the various suits, or of the circumstances under which the funds have been allowed to remain in Court. Such information may be sought by inspection of the Orders, &c., of the Court (see note, below).

The information which, subject to the conditions mentioned below, the Paymaster can furnish is—

(*a.*) The amount of the fund in Court.

(*b.*) The date, if desired, of any Order of Court known to relate to the account, other than that stated in the last column of the list.

2. Information respecting funds in Court, to the extent shown above, is only supplied upon a written request, signed by the applicant, or by his solicitor. If the request is made by a person who is not a solicitor, the Supreme Court Funds Rules direct that "such information shall not be given unless the applicant is able to satisfy the Paymaster that the request is such as may, in the particular case, be properly complied with." (Rule 101.)

The applicant must establish to the satisfaction of the Paymaster that he has or might have some beneficial interest in the fund : but the mere fact that he bears the same surname as that of a person named in an account is not sufficient evidence of such interest.

3. In the case of a request for information made by a solicitor, "such information shall not be given unless the request states the name and address of the person on whose behalf it is made, and that such person is, in the opinion of the applicant, beneficially interested in such funds. (Rule 101.)

4. Every application must quote the correct title of the matter or suit to the credit of which funds are placed, and application must be stamped with a 2*s.* 6*d.* adhesive judicature stamp (Supreme Court Fees Order, 1884, rule 107). Such stamps can be obtained at rooms 5 and 420 of the Royal Courts of Justice ; at the district registries of the High Court ; and at all head post offices in England.

5. Funds in Court can only be paid out or otherwise dealt with under the direction of an order of court. If a fund cannot be dealt with under an Order quoted in the list, or under any other existing Order, application to the Court for further directions will be necessary, in accordance with the customary forms of legal procedure. No legal advice can be given at the Pay Office as to the steps necessary to be taken in this event.

6. All official letters should be addressed to—

THE ASSISTANT PAYMASTER-GENERAL,
Royal Courts of Justice,
London, W.C.

Notice as to Unclaimed Funds.

NOTE.—The orders, reports, certificates, and affidavits referred to in the lists are kept, if prior to 1876, at the Legal Room of the Public Record Office, Chancery Lane, London. Those from 1876 to the present time are kept at the Filing and Record Department of the Central Office, Royal Courts of Justice (Room 81).

Wills, probates, and letters of administration are kept at the Principal Probate Registry, Somerset House, London.

Records of births, marriages, and deaths are filed at the General Register Office, Somerset House.

They can be inspected during official hours, or copies obtained on payment of the prescribed fees.

CONVERSION ACT (FUNDS) RULES, 1888.

Conversion Act (Funds) Rules, 1888.

I, the Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, with the concurrence of the Lords Commissioners of her Majesty's Treasury, do hereby, in pursuance of the provisions contained in the National Debt (Conversion) Act, 1888, and of every other authority enabling me in that behalf, order that the following Rules and Regulations as to conversion of stocks standing in the name of her Majesty's Paymaster-General for and on behalf of the Supreme Court of Judicature under the above-named Act, and to other matters relating to such stock or the dividends thereon, be observed.

Rule I.—In the Rules of this Order, and in all Orders of the Court and certificates dealing with or referring to new stock created under the said Act, such new stock shall be sufficiently described by the term "New Consols." And in these Rules the term "Original Stock" shall mean any sum of New Three per cent. stock, Consolidated Three per cent. stock, and Reduced Three per cent. stock, which shall be exchanged for New Consols.

CONVERSION OF NEW THREE PER CENT. STOCK.

[Rules II. to IX. relate exclusively to the conversion of New Three per cent. stock. As the conversion of this stock has been completely effected, it has not been thought necessary to print these Rules.]

CONVERSION OF CONSOLS OR REDUCED ANNUITIES.

[Rules X. to XIV. deal with the conversion of consols and reduced annuities. As the time has passed within which the provisions of these Rules had to be complied with, it has not been thought necessary to print them.]

GENERAL DIRECTIONS.

Rule XV.—The New Consols received in exchange for original stock shall be placed by the Paymaster to the same credit as that to which such original stock was standing, and such New Consols and the dividends thereon including as part of such dividends the consideration money of 5*s.* for every hundred pounds of stock mentioned in sect. 10 of the said Act, shall, unless otherwise ordered, be dealt with in the same manner as such original stock and the dividends thereon were directed to be dealt with, except that any investment or accumulation shall be made in New Consols. All stop orders, charging orders, powers of attorney, and other documents relating to the original stock or the dividends thereon, shall apply to such New Consols or the dividends thereon.

Rule XVI.—Where the dividends on New Consols shall be insufficient to make the payments by any order or upon any authority directed to be made out of the dividends on the original stock the whole of such dividends shall be applied, so far as the same will extend towards making such payments, but without prejudice to any application which may be made under section 20 of the Act, to make up the deficiency out of capital.

Rule XVII.—Where such original stock as is referred to in the last preceding rule has been appropriated to provide an annuity of an amount equal to the dividends thereon, the Paymaster shall, without order for that purpose, upon a memorandum signed by a Registrar, Master in Lunacy, or Chief Clerk, in the Form D in the Schedule hereto, with such alterations as the circumstances may require, sell from time to time so much of any New Consols exchanged therefor, or any other securities in which the original stock may have been re-invested, as, with the dividends thereon, will raise the amount required for any periodical payment of such annuity after deducting the income tax on such dividends.

Rule XVIII.—The Paymaster may signify his assent notwithstanding any stop order or charging order affecting any Consols or reduced annuities, and without the consent of the persons named in such stop order or charging order.

Rule XIX.—No Court fee shall be charged upon any summons, order, certificate, affidavit, or other document or proceeding required for the purpose of giving effect to these rules.

Rule XX.—All provisions in the Supreme Court Funds Rules, 1886, as to the exchange of Government securities and transactions with the National Debt Commissioners shall apply to New Consols.

Rule XXI.—Notwithstanding these rules, the Court or a Judge may, if circumstances shall require, make a special order relating to conversion of any original stock in any cause or matter.

Rule XXII.—In these rules "the Act" means the National Debt (Conversion) Act, 1888; and "Paymaster" means Her Majesty's Paymaster-General on behalf of the Supreme Court of Judicature. Expressions in these rules have the same meanings as in the Act.

Rule XXIII.—These rules may be cited as the Conversion Act (Funds) Rules, 1888.

29 March, 1888. HALSBURY, C.

We certify that these rules and regulations are made with the concurrence of the Commissioners of Her Majesty's Treasury.

SIDNEY HERBERT.
W. H. WALROND.

Conversion Act (Funds) Rules, 1888, Schedule.

SCHEDULE.

[Forms A., B., and C. in this Schedule relate exclusively to rules dealing with the conversion of stock. They are not printed as being no longer of practical utility.]

FORM D.

Short Title of Cause or Matter as in the Order.

Ledger Credit (*as in Paymaster's books*).

£ New Consols.

The (*describe the old stock*) which have been exchanged for the above-mentioned New Consols having been by the Order dated the day of appropriated to provide an annuity of £40 a year for A. B. in the said Order named, by half-yearly payments of £20 as in the said Order mentioned, the Paymaster is directed at the time fixed for each periodical payment of such annuity, to sell so much of the New Consols as, with the dividends then applicable for such payment, will raise such sum of £20 after deducting from such sum the income tax which has been deducted on such dividends, and to pay the amount raised by such sale to the said A. B.

Dated this day of , 1888.

(Signed)

MEMORANDUM. — JUDGES' DIRECTIONS TO CHIEF CLERKS IN REFERENCE TO RULE XVII.

I. *Service.* (*a.*) It will be sufficient to serve the summons in the first instance only on the trustees or trustee, executors or executor, or if there is no trustee or executor, or the trustees or trustee, executors or executor cannot without difficulty or expense be found or ascertained, then on some person interested in the corpus of the fund.

(*b.*) Where there is a stop order the summons should also be served on the person entitled to the benefit of the order, and the service should be accompanied with a tender of 13*s.* 4*d.*, and an intimation that if he appears it will be at his own risk as to costs.

Redemption Act (Funds) Rules, 1889.

REDEMPTION ACT (FUNDS) RULES, 1889.

I, The Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, with the approval and concurrence of the Lords Commissioners of Her Majesty's Treasury as to such of the rules as require such approval or concurrence, and with the consent of the Honourable Sir Edward Kay, the Honourable Sir Joseph William Chitty, the Honourable Sir Ford North, the Honourable Sir James Stirling, and the Honourable Sir Arthur Kekewich, Justices of the High Court of Justice, do hereby in pursuance of the provisions contained in the National Debt (Redemption) Act, 1889, and of every other authority enabling me in that behalf, order that the following rules and regulations be observed as to the money to be received on the redemption of stocks standing in the name of Her Majesty's Paymaster-General for and on behalf of the Supreme Court of Judicature under the above-mentioned Act, and other matters relating to such stocks or the dividends thereon.

Rule I.—In these rules the following terms shall have the following meaning, that is to say: "New Consols" shall mean stock created under the National Debt (Conversion) Act, 1888, or the National Debt (Conversion) Act, 1889; "original stock" shall mean any sum of Consolidated Three per cent. stock, or Reduced Three per cent. stock, standing in the name of the Paymaster; "original Act" shall mean the National Debt (Conversion) Act, 1888: "redemption money" shall mean any money received by the Paymaster in payment off of the principal of such original stock; "the Act" shall mean the National Debt (Redemption) Act, 1889; "Paymaster" shall mean Her Majesty's Paymaster-General on behalf of the Supreme Court of Judicature; "order" shall mean any order of the High Court of Justice or Court of Appeal, or any order or certificate in Lunacy, or any other authority to be acted upon by the Paymaster, and any expressions in these rules shall have the same meanings as in the Act.

Rule II.—Where by any order an investment or accumulation in Consols or Reduced Annuities is directed, such investment or accumulation shall hereafter be made in New Consols, unless an order to the contrary is lodged with the Paymaster.

Rule III.—Where original stocks are by any order directed to be transferred to any person, but the transfer shall not have been made before the 6th day of July, 1889, the Paymaster shall pay to such person the redemption money when received by him, or at the option of such person shall transfer to him an equivalent nominal amount of New Consols, or an amount of Local Loan Stock equivalent, at the certified price of the day of bespeaking the transfer, to the amount of such redemption money. Such option shall be expressed at the time of bespeaking the transfer according to the Form A. in the schedule hereto. Where original stocks are by any order directed to be sold, but such sale shall not have been made before the 6th day of July, 1889, the redemption money shall, unless otherwise ordered, be applied in the same manner as

the proceeds of such sale would have been applied if the original stocks had been sold instead of being redeemed.

Rule IV.—Any person or persons, to whom under any order the dividends on any original stock are payable, desirous of signifying dissent to interest on the redemption money continuing to be paid as provided by section 12 of the Act as amended by section 3 of the National Debt Act, 1889, shall lodge with the Paymaster on or before the 1st day of July, 1889, a notice according to the Form B. in the schedule hereto.

Rule V.—Where under any order Consols or Reduced Annuities are to be lodged in Court, the Paymaster shall be at liberty to receive in lieu thereof an equal nominal amount of cash, and such cash shall be invested by the Paymaster in New Consols without any order for that purpose, and the dividends on such New Consols shall be applied in the same manner as the dividends on such Consols or Reduced Annuities would have been applicable.

Rule VI.—The Paymaster shall, on any certificate of funds to be issued by him, notify the amount of redemption money in respect of which interest continues to be paid. The interest which continues to be so paid, and also the amount received in respect of the proportionate part of the dividends on original stock accrued since the last date for the payment of dividends, shall be paid or applied to the same person or persons, or in the same manner, as the dividends on the original stock would have been paid or applied if the same had not been redeemed. All stop orders, charging orders, powers of attorney, and other documents relating to the original stock, or the dividends thereon, shall apply to such redemption money or the interest thereon.

Rule VII.—The Paymaster shall, on the receipt by him of a request in writing signed by the person or persons to whom under any order the dividends on original stock are payable at the time of such payment off, and without any order for that purpose, invest redemption money in New Consols, such request shall be according to the Form C. in the Schedule hereto. If no such request shall have been received by the Paymaster before the 5th day of April, 1890, and if no order dealing otherwise with the redemption money shall have been lodged with him before that day, the Paymaster shall invest the redemption money in New Consols.

Rule VIII.—These rules shall apply to cases where an order dealing with original stock directs the transfer or the payment of the dividends on the residue of such stock after a previous dealing therewith.

Rule IX.—Where a portion only of the dividends on original stock are under an order payable to any person or persons, and the residue of such dividends are directed to be accumulated, the Paymaster may act upon a consent or request from such person or persons in the same manner as if the whole of such dividends were payable to them.

Rule X.—The New Consols purchased with redemption money under these rules shall be placed by the Paymaster to the same credit as that to which the original stock was standing, and such New Consols and the dividends thereon shall, unless otherwise ordered, be dealt with in the same manner as such original stock and the dividends thereon were directed to be dealt with, except that any investment or accumulation of dividends shall be made in New Consols. All stop orders, charging orders, powers of attorney,

Redemption Act (Funds) Rules, 1889.

and other documents relating to the original stock, or the dividends thereon shall apply to such New Consols or the dividends thereon.

Rule XI.—Where the dividends on New Consols shall be insufficient to make the payments by any order directed to be made out of the dividends on the original stock, the whole of such dividends shall be applied so far as the same will extend towards making such payments, but without prejudice to any application which may be made under Section 20 of the original Act, to make up the deficiency out of capital.

Rule XII.—No Court fee shall be charged upon any summons, order, certificate, affidavit, or other document or proceeding required only for the purpose of giving effect to these rules, and no brokerage shall be charged upon any re-investment of redemption money in New Consols or Local Loan Stock.

Rule XIII.—All provisions in the Supreme Court Funds Rules, 1886, as to the exchange of Government securities and transactions with the National Debt Commissioners shall apply to New Consols or Local Loan Stock.

Rule XIV.—Notwithstanding these rules the Court or a judge may, if circumstances shall require, make a special order dealing with any redemption money.

Rule XV.—Where under these rules a consent or request has to be given or made by the person or persons to whom under any order the dividends on original stock are payable, such consent or request may be given or made by any person holding a power of attorney to receive such dividends, but it shall be stated on the face of such consent or request that it is given or made with the sanction of the person or persons by whom such power of attorney was granted.

Rule XVI.—Any consent, request, or dissent required by these rules may be acted upon by the Paymaster if the signature to it is authenticated in such manner as he shall deem sufficient.

Rule XVII.—These rules may be cited as the Redemption Act (Funds) Rules, 1889.

SCHEDULE.

FORM A.

Short Title of Cause or Matter (as in the Order).

Ledger Credit (*as in Paymaster's Books*).

(*Insert* amount of redemption money as in Paymaster's Books.)

I, the person (*or* we, the persons) to whom under the Order dated the £ Consols or Reduced Annuities represented by the above-mentioned redemption money are to be transferred, request that such redemption money may be paid out (*or*) that a like sum of £ New Consols (*or*) a sum of £ Local Loan Stock equivalent at the certified price of this day to the amount of such redemption money may be transferred to me (*or* us).

Dated this day of 18 .

(Signed)

FORM B.

Short Title of Cause or Matter (as in the Order).

Ledger Credit (*as in Paymaster's Books*).

£ Consols. £ Reduced Annuities.

I, the person (*or* we, the persons) to whom under the Order dated the dividends on the above Consols (or Reduced Annuities) are payable hereby dissent from the redemption money in respect thereof continuing to bear interest as provided by Section 12 of the National Debt Redemption Act, 1889, as amended by Section 3 of the National Debt Act, 1889.

Dated this day of 18 .

(Signed)

FORM C.

Short Title of Cause or Matter (as in the Order).

Ledger Credit (*as in Paymaster's Books*).

(*Insert* amount of redemption money as in Paymaster's Books.)

I, the person (*or* we, the persons) to whom under the Order dated the dividends on the £ Consols (*or* Reduced Annuities) represented by the above-mentioned redemption money were payable do hereby request that such redemption money be invested in New Consols.

Dated this day of 18 .

(Signed)

PART IV.

ADDITIONAL NOTES ON PROCEDURE AND PRACTICE.

[These notes deal with matters which are common to the whole, or to many of the Orders, or which are outside them, but connected with them. They also contain matter which has been transferred from some of the longer notes in Volume I., in order to relieve that Volume.]

1. COMPROMISE, p. 326.
2. CONSTRUCTION OF JUDICATURE ACTS AND RULES, p. 327.
3. COSTS (IN CERTAIN CASES), p. 330.
4. DISMISSAL OF ACTION, p. 331.
5. INFANTS, p. 333.
6. JUDGMENTS AND ORDERS, p. 339.
7. LUNATICS, p. 342.
8. MARRIED WOMEN, p. 348.
9. NON-SUIT, p. 354.
10. REPORTS, &c. (CITATION OF) p. 354.
11. SOLICITORS, p. 356.

COMPROMISE.

Compromise.

Compromise.—A compromise takes place when there is a question of doubt, and the parties agree not to try it out, but to settle it between themselves by a give-and-take arrangement, *per* Kay, L.J., *Huddersfield Banking Co.* v. *Lister* (1895), 2 Ch. p. 285.

Who may Compromise.—Parties, acting honestly and without intending to cheat, may compromise an action without intervention of their solicitors, and although the plaintiff sues *in formâ pauperis*, *Re Hope*, 8 P. D. p. 146. As to the power of counsel to compromise, see (n.) "Authority of Counsel," *infra*, p. 341. A solicitor, although retained to act, has no power to compromise *before* action, *Macaulay* v. *Polley*, (1897) 2 Q. B. 122. As to power of trustee in bankruptcy, see *Leeming* v. *Murray*, 13 C. D. 123.

Setting aside.—If it is desired to set aside on the ground of fraud, &c., a compromise already approved, a new action must be brought (*Emeris* v. *Woodward*, 43 C. D. 185; *Gilbert* v. *Endean*, 9 C. D. 259; *Boyd* v. *Bischoffsheim*, 38 Sol. Jo. 648). As to the effect of a compromise embodied in a consent order, see *Re S. American, &c., Co.* (1895), 1 Ch. 37; and as to setting such order aside on ground of mistake see (n.) "Judgment by Consent," p. 340, *infra*.

Enforcing.—As to staying action brought, or proceeded with, after compromise, see J. A. (1873) s. 24, ss. 5 (n.), p. 405.

May be enforced by motion in any Court in which pending proceedings are compromised. *Re Gaudet, &c.*, 12 C. D. 882; *The Alliance, &c.* v. *Mac Ivor & Co.*, 7 Times Rep. 599; cf. *Turner* v. *Green* (1895), 2 Ch. 205; or by action for specific performance, *Hart* v. *H.*, 18 C. D. 670; *Bayley* v. *Birch* (1894), 8 R. 647.

Making Rule of Court.—A compromise made in one court can be

Compromise.

made a rule of another, *semble*, on notice (*Smythe* v. *S.*, 18 Q. B. D. 544). But *semble*, the terms of the compromise should contain an agreement that it should be made a rule (see *Graves* v. *G.*, 69 L. T. 420).

It seems clear that, where an action has been discontinued in pursuance of the terms of the compromise, such compromise cannot be made a rule (see *Ibid.*, 28 L. J. N. C. 558 (C. A.)).

Sanction of A.-G. to.—In *Boughey* v. *Minor*, (1893) P. 181, the A.-G. being interested in a residue dealt with by a proposed compromise was cited to give his sanction thereto.

Sanction of Court to, in absence of Parties.—O. 16, r. 9A.

Power of Court to go behind Compromise.—The Court of Bankruptcy has power to go behind a compromise leading to a judgment and inquire into all the circumstances, *Re Hawkins* (1895), 1 Q. B. 404; cf. *Turner* v. *Green* (1895), 2 Ch. 205.

Infants, Compromise by.—See (n.) p. 333.

CONSTRUCTION OF JUDICATURE ACTS AND RULES.

Construction of Judicature Acts and Rules.

Construction of Judicature Act and Rules.—The court must not give to the rules a pleader's construction, but one consistent with common sense. (*Edwards* v. *Lowther*, 24 W. R. 434; and see (n.) "Generalia," &c., *infra*.)

It is the duty of Courts and Judges as far as possible to mould the procedure so as to meet the exigencies of the case, *per* Fry, L.J., *Davies* v. *André*, 24 Q. B. D. p. 607.

"Practical rules ought not to be construed according to mere grammar, if that which is an absurdity from a business point of view is thereby produced," per Esher, M.R. *Hannay* v. *Smurthwaite*, (1893) 2 Q. B. p. 420.

The rules in the schedules are as much part of the Act and of the will of the legislature in the passing of the Act as any section in the Act itself; *per* Blackburn, L.A., *Garnett* v. *Bradley*, 3 App. Cas. p. 964; and see *Snelling* v. *Pulling*, 29 C. D. at p. 87.

The Judicature Act "is only a statute as to procedure, and was not intended to alter the rights of parties." (*Lyell* v. *Kennedy*, 20 C. D. p. 491; *Britain* v. *Rossiter*, 11 Q. B. D. 123; *Kendall* v. *Hamilton*, 4 App. Cas. 504; *Macdonald* v. *Tacquah G. M. Co.* 13 Q. B. D. p. 539; *Reg.* v. *Gyngall*, (1893) 2 Q. B. p. 259; *North L. R. Co.* v. *G. N. R. Co.*, 11 Q. B. D. 30; *The Longford*, 14 P. D. 34; *Stamore* v. *Campbell* (1892), 1 Q. B. 314.) The rights of parties are not altered by these rules, Bramwell, L.J., *Pellas* v. *Neptune, &c., Co.*, 5 C. P. D. 34, except so far as alteration of procedure may alter rights, *Emmerson* v. *Ind*, 12 App. Cas. 300, and (see judgment of Bowen, L.J., in *Elder* v. *Carter*, 25 Q. B. D. p. 201) although every rule of law or equity does affect rights; and see *Vibart* v. *Coles*, 24 Q. B. D. p. 368, *per* Fry, L.J. The rules made under these Acts do in many respects qualify the rules of law resting upon Acts of Parliament. *Reg.* v. *Kettle*, 17 Q. B. D. p. 763.

They do not extend the jurisdiction (*Westbury, &c.* v. *Meredith*, 30 C. D. 387; *Re Mills*, 34 C. D. p. 33; and cf. *Andrews* v. *Barnes*, 39 C. D. 133; *Lavery* v. *Pursell*, 39 C. D. 518; *British S. A. Co.* v. *Companhia de Moçambique* (1893), A. C. 602, p. 11). "The rules have the effect of an Act of Parliament, but must be construed in accordance with the spirit of the Judicature Acts" (Bramwell, L.J., *Schneider* v. *Batt*, 8 Q. B. D. 701). They were made to carry out the statute, not to extend it: the orders are made part of the Act of 1875, and have all the force of an enactment, but even then they are to be read as parts of the earlier statute (1873), *per* Brett, L.J., in *Longman* v. *East*, 3 C. P. D. p. 156; and see *Re Mills*, 34 C. D. at p. 33 (C. A.); *Re Fisher* (1894), 1 Ch. 450.

Generalia specialibus non derogant.—The Stannaries Act provided that appellants should deposit £20 as a special protection to a litigant who had succeeded in that Court, and the Judicature Acts and Rules do not

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alter this, *Re West Devon, &c., Co.*, 38 C. D. p. 55 (C. A.). The Mayor's Court Act, 1857, s. 8, requires security for costs to be given on appeal for recovery of more than 20*l.*, and this is not repealed by O. 59, rr. 10—17. *Morgan* v. *Bowles*, (1894) 1 Q. B. 236. The rules as to trial without a jury (O. 36, rr. 2—5) do not alter the special legislation under the Regulation of Railways Act, 1868, which provides (s. 41) for trial of certain matters by a judge with a jury, *Re East London Ry. Co.*, 24 Q. B. D. 507. And where one rule of the R. S. C. is general and another specific, the latter will prevail. *Locke* v. *White*, 33 C. D. 308. The Legitimacy Declaration Act prescribes that a claim under it must be brought by petition, it cannot, therefore, be brought by writ under O. 2, r. 1. *Warter* v. *W.*, 15 P. D. 35, cited O. 1, r. 2 (n.). As to costs, *Hasker* v. *Wood*, 54 L. J. Q. B. 419 ; J. A. (1890), s. 5.

Inconsistency.—See (n.) *infra*, "Where no rule," &c.

Forms.—Rules of Court include forms. J. A. 1873, s. 100.

Exceptions.—See O. 68.

Savings.—See J. A. 1873, s. 23, and as to saving of existing procedure, &c., when not inconsistent with these rules, see J. A. 1875, s. 21, and O. 1, r. 2 ; O. 68 ; O. 72, r. 2.

Where no Rule, or Variance.—The jurisdiction conferred on the courts by the Act (see J. A. 1873, ss. 4, 16, 17, 18, Part V., *post*) is to be exercised (as regards *procedure* and *practice*) according to the rules, but if there is no rule on the point, then the *procedure* in use in the courts before the Act is to be followed (J. A. 1873, s. 23, Part V., *post*, (n.) "As nearly as may be;" O. 72, r. 2) ; provided there is no inconsistency (J. A. 1875, ss. 21, 33 (2), (n.)) ; and the rules must not be taken as being inconsistent with the Act, *Re Fawsitt*, 30 C. D. p. 235.

If there is no rule *of practice* laid down by these rules, and there is a variance between the old Chancery and the old Common Law rule of practice, then the *most convenient* of the two is to prevail, for J. A. 1873, s. 25 (11), does not refer to rules of *practice*. See that sub-section Part V., *post* (n.) and also sub-section 9.

The following cases illustrate the application of these principles:—Where a solicitor commences an action without authority the Common Law Rule that the plaintiff is entitled to an order to stay, without payment of defendant's costs, will be followed as being more just and convenient, *Newbiggin Gas Co.* v. *Armstrong*, 13 C. D. 310 ; *Nurse* v. *Durnford*, 13 C. D. 764 ; *Re Scholes*, 32 C. D. 245. In *Re Copp*, 32 W. R. 25, the Court (Kay, J.) refused a rule *nisi* calling on a solicitor to show cause why he should not perform an undertaking to deliver documents, for although the Court has the power (J. A. 1873, s. 87) it will exercise it according to the practice with which it is familiar. In *Re Pollard*, 20 Q. B. D. 656, it was held that although all branches of the S. C. had jurisdiction to make an order on a solicitor for delivery of a bill for work not done in court, yet the well-known practice of applying to the judges of the C. D. ought to have been followed. In *Thomas* v. *Palin*, 21 C. D. p. 367, the indorsement of consequences on an order as required by the old practice in Chancery was held unnecessary, following the Common Law (see now O. 41, r. 5). In *Clarborough* v. *Toothill*, 17 C. D. 787, a summons was taken out under 3 & 4 Will. 4, c. 42, s. 40 (which relates in terms to common law actions), requiring B. to attend before an arbitrator and give evidence, Jessel, M.R., made the order. In *Walmsley* v. *Mundy*, 13 Q. B. D. 807 (C. A.) the Q. B. D. appointed a receiver, subject to rights of prior mortgagees ; "G." an alleged mortgagee, moved to discharge the order, the question of his title as mortgagee was referred to a Master, who reported against it ; the Court declined to entertain a motion to vary the report ; held, that the jurisdiction exercised being equitable, the practice in equity should have been followed, and the report considered. In *La Grange* v. *McAndrew*, 4 Q. B. D. 210, the equitable rule that a defendant might get an action dismissed for want of prosecution without abandoning his security for

costs was followed, as being the most just and convenient, and see *Warder* v. *Saunders*, 10 Q. B. D., p. 117; and see as to taxation of costs, *Easton* v. *London, &c., Bank*, 38 C. D. p. 29; *Andrews* v. *Barnes*, 39 C. D. 133. So far as they are unaltered by new rules, or are not inconsistent therewith (as to inconsistency, see *Garnett* v. *Bradley*, 3 App. Cas. 944), the old rules are binding on the Judges, *Pringle* v. *Gloag*, 10 C. D. 676, cited O. 65, r. 37 (n.); *Laming* v. *Gee*, 10 C. D. 715; *Commissioners* v. *Gellatly*, 3 C. D. 610; *Jackson* v. *Litchfield*, 8 Q. B. D. 474; *Mayor* v. *Collins*, 24 Q. B. D. 361; and cf. *Hume* v. *Somerton*, 25 Q. B. D. 239; *Temperton* v. *Russell*, (1893) 1 Q. B., p. 438; O. 72, r. 2 (n.); J. A. 1873, s. 76; J. A. 1875, s. 21. In arbitration matters the practice of the Common Law Courts was followed, and the submission had to be made a rule of Court, *Jones* v. *J.*, 14 C. D. 593; *Re Oglesby*, W. N. (79) 151; see now Arb. Act, 1889, s. 1, p. 529; and the same rule was observed in moving to set aside an award, *Mercier* v. *Pepperell*, 19 C. D. 58.

P. D. & A. Div.—The P. D. may order interrogatories to be delivered, notwithstanding O. 68, r. 1 (*d*), *Harvey* v. *Lovekin*, 10 P. D. 122, *Redfern* v. *R.* (1891) P. 140, and has, like the other Divisions, a discretionary power to condemn a married woman in costs, *Morris* v. *Freeman*, 3 P. D. 65. So in Admiralty cases the practice of the High Court on general matters, *e.g.*, discontinuance, will be followed, *The J. H. Henkes*, 12 P. D. 106. But if the old Admiralty rule *is the best*, it will be applied, even in cases which before the Jud. Acts would not have been within its jurisdiction, *e.g.* interest on damages awarded to plaintiff, will be given from time claim arose, *The Gertrude*, 13 P. D. p. 109 (C. A.), from which it seems that the principles of the Division to which more especially the matter belongs will be applied, unless both parties have consented. Cf. (n.) "As nearly as may be," J. A. 1873, s. 23, Part V., *post*, and see further *Boddy* v. *Wall*, 7 C. D. 164; *Fowler* v. *Barstow*, 20 C. D. 240; *Re National, &c., Co.*, 4 C. D. 305. In taking evidence before an examiner it was the practice before 1883 to have the evidence taken by a shorthand writer, and this practice still continues, see *The Knutsford* (1891), P. 219.

Variance between Admiralty Rules and those of Common Law.—As to following the Admiralty rules, in cases of damage through collision where there is a variance between them and those of the Common Law, see J. A. 1873, s. 25, ss. 9 and (n.) Part V., *post*.

Special procedure under Acts, &c.—The Rules do not do away with any special direction (or procedure or practice, J. A. 1873, s. 23) to which they do not expressly refer. See (n.) "Generalia specialibus," &c., p. 327.

Non-Compliance.—Non-compliance with any of these rules is not to render the proceedings void, unless so directed; but they may be set aside as irregular, struck out, or amended. (O. 70; O. 19, r. 27.)

Chambers, Practice in. Authority of.—No practice (of the Masters) however long established, however continuous, is of any legal authority or in any way binds the Court unless it has been determined by the Court to be the right practice, *per* Esher, M.R., in *Stumm* v. *Dixon*, 22 Q. B. D. p. 531; and *per* Grove, J., in *Salm Kyrsburg* v. *Posnanski*, 13 Q. B. D. p. 224; and see *Hume* v. *Somerton*, 25 Q. B. D. 239; *Davies* v. *André*, 24 Q. B. D. 598.

Words in Rules.—"*At any Time.*" "*At any Stage.*"—These or similar words occur frequently in the rules, see O. 16, r. 11; O. 28, r. 1. "We have no right to diminish the full force of these words unless from the Act itself or the Rules, we find some necessary implication to limit the force of it," *per* Esher, M.R., in *Ex p. Norris*, 17 Q. B. D. p. 731, on like words in Bankruptcy Act, 1883, Sched. 2, r. 12.

"*Court or a Judge.*"—The Rules provide in innumerable cases for jurisdiction being exercised by "the Court or a Judge." See for instance, O. 8, rr. 1 & 3; O. 9, rr. 4, 5; O. 12, rr. 22, 25; O. 13, r. 1; O. 16, rr. 2 & 11, 32, 47 48; O. 17, rr. 2, 4; O. 19, r. 27; O. 21, r. 6; O. 27, r. 11. Jessel, M.R., in *Freason* v. *Loe*, 26 W. R. 138, said these words were used in the rules because the rules applied to all the divisions, and in

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the common law divisions it was not always possible to get a Judge in Chambers (see O. 52, r. 1). The words "the Court" mean the Court sitting in banc, that is a Judge or Judges in open Court, and a Judge means a Judge sitting in Chambers; *per* Kay, L.J., *Re B.* (1892), 1 Ch. p. 463; *Baker* v. *Oakes*, 2 Q. B. D. 171; and see *Dallow* v. *Garrold*, 14 Q. B. D. p. 546. A "Judge" in O. 27, r. 11, does not include a Judge of Assize, *Greenwood* v. *Briggs*, 41 Sol. Jo. 409.

Where therefore these words are used a jurisdiction is given to a Judge in Chambers, as to which see J. A. 1873, s. 39, as well as in Court. In the Q. B. D. the Master can exercise all the jurisdiction of a Judge in Chambers (O. 54, r. 12 (n.)), except such as is excepted by O. 54, r. 12, and from his exercise of such jurisdiction an *appeal* lies to the judge. In the C. D. in theory every order made in Chambers is the order of the judge, but the Masters in that Division are his representatives, and every application comes before them in the first instance. The judge gives directions to these officials (O. 55, r. 15), as to the particular matters which are to be referred to him, the judge, in person, and the rules also except certain matters from their jurisdiction (O. 55, rr. 15, 15a). The Master in the C. D. being, except so far as his certificate is concerned, an impersonal officer, there is no *appeal* from his decisions, but every suitor has an absolute right to take the opinion of the judge himself, by *way of adjournment*.

Where power is given by the R. S. C. to a "Court or a Judge" it cannot be delegated to a Master, &c., unless rules, see O. 54, r. 12, so provide, *Lambton* v. *Parkinson*, 35 W. R. 545; *Smeeton* v. *Collier*, 1 Ex. 457; *Re Donisthorpe, &c.*, (1897) 1 Q. B. 671. See as to Masters and Registrars, O. 54, r. 12; District Registrars, O. 35, r. 6; Masters, C. D., O. 55, rr. 15, 15a, 16. But where it is given by an Act prior to the Judicature Acts, see *Re Thomas*, (1893) 1 Q. B. 670, cited J. A. 1873, s. 39 (n.).

It was held by Jessel, M.R., that where these words are used applicant has an option, and may proceed either by summons or motion (*Freason* v. *Loe*, 26 W. R. 138): but cf. (n.) "Proceeding by more expensive method," p. 331, *infra*. Where the application is to a Divisional Court, it must be by motion, O. 52, r. 1.

"*The Court.*"—The words "the court" do not include a judge at chambers (*Baker* v. *Oakes*, 2 Q. B. D. 171; *Re Davidson*, (1899) 2 Q. B. 103; cf. further, *Clover* v. *Adams*, 6 Q. B. D. 622; and J. A. 1873, s. 39, Part V., *infra*, and (n.)). In *Cooke* v. *The Newcastle, &c., Co.*, 10 Q. B. D. 332, "Court" was held to mean a Divisional Court.

The word "Court" includes the Judges thereof, see *Dallow* v. *Garrold*, 14 Q. B. D. 543.

"*May.*"—In all the Rules the word "may" has been held to mean "may or may not." This gives the Court a discretion, and no rule or practice can take it away: *A.-G.* v. *Emerson*, 24 Q. B. D. 56.

This word is potential; it can never mean "must" or "shall," it confers a power simply. But as to whether there is a *duty to exercise* the power depends on the context, *Re Baker*, 44 C. D. p. 268; cf. *Reg.* v. *Judge Turner* (1897), 1 Q. B. 445. In *Re Eyre's Arb.*, (1892) 1 Q. B. p. 143, two members of the C. A. held that this word in Arb. Act, 1889, s. 5, Part V., *post*, was equivalent to "must."

COSTS (in certain cases).

Costs.

Continuing an Action for Costs.—If after writ issued the defendant concedes the plaintiff's demand or removes or satisfies the cause of action, but refuses to pay the costs incurred up to that time, the plaintiff will generally be entitled to go on with the action in order to obtain such costs, *Burgess* v. *Hill*, 26 Beav. 244; *Storr* v. *Corp. of Maidstone*, W. N. (78) 219; *Upmann* v. *Forester*, 24 C. D. 231; but the Court has a discretion, see *American Tobacco Co.* v. *Guest* (1892), 1 Ch. 630. See note "Right to bring action to trial for costs only," O. 65, r. 1, p. 907.

Offer after action brought. Effect on Costs.—In order to have any

Costs.

effect on the costs of the action the offer must go to everything which the Court eventually holds the successful party entitled to (*The Birmingham &c., Co.* v. *L. & N. W. Ry. Co.*, 57 L. T. 185. In *Jenkins* v. *Hope*, (1896) 1 Ch. 278, the defendant offered, after writ issued for an injunction, an undertaking in the terms of the writ and payment of all costs. The plaintiff served statement of claim and particulars of breaches, and moved for an injunction. The defendant had the costs subsequent to the offer less the costs of the day).

Indulgences; Discretion; Costs.—In many cases parties are compelled to ask for an extension of the time fixed by the Rules for taking steps in an action, *e.g.*, for a judgment to be set aside, for a pleading to be amended, &c., which necessity has arisen from some mistake, error or carelessness on the part of the applicant. Lord Bramwell, in *Collins* v. *Vestry of Paddington*, 5 Q. B. D. 368, considered that where the mistake, error, &c., had been real and unintentional, and no damage had been done to the other side which could not be repaired by payment of costs or otherwise the application should be granted, not as an indulgence, but as a matter of right; otherwise where there was *mala fides*. It would seem, however, that the granting or refusing of such application (*e.g.*, under O. 27, r. 15; O. 28, r. 1; O. 58, r. 15, &c.) is subject always to the *discretion* of the Court, and that no rule fettering this discretion should be laid down, but that each case should be considered solely upon its own merits: *Cusack* v. *L. & N. W. R. Co.* (1891), 1 Q. B. 348.

Proceeding by more Expensive Method.—Where a plaintiff or petitioner proceeds by a more expensive method rather than by the cheaper, he may be ordered to pay the costs of the difference (*Re Kellock*, 35 W. R. 695; *Curwen* v. *Milburn*, 42 C. D. p. 427: *A.-G.* v. *St. John's Hospital*, (1893) 3 Ch. 151: *Re Lancashire and Yorkshire Ry. Co.*, 72 L. T. 627). So if he proceed in an action for redemption by writ, rather than by originating summons (*Johnson* v. *Evans*, 60 L. T. 29; cf. also *Wilson* v. *Church*, 9 C. D. 552). But where the practice has been to proceed by motion rather than by summons, the Court will sometimes remit the penalty, see *Re Hartley*, 66 L. T. 588. Where, however, the rules give an option the applicant may avail himself of it (*Freason* v. *Loe*, 26 W. R. 138; cf. also *Cook* v. *Heynes*, W. N. (84) 75; *Allen* v. *Oakey*, 62 L. T. 724).

Multiplicity of Actions.—If plaintiff brings two actions where one would suffice, he may have to pay the extra costs. *Muddock* v. *Blackwood*, (1898) 1 Ch. p. 64.

DISMISSAL OF ACTION.

Dismissal of Action.

Dismissal is of two kinds: (1) Dismissal on the merits; (2) Dismissal for default in complying with the Rules as to procedure and practice.

Dismissal on the merits.—Where there has been a "litis contestatio" (where, for instance, the action has been set down on a point of law under O. 25, r. 2), then *for the purpose of an appeal* a judgment dismissing the action under O. 25, r. 3, is "interlocutory," not "final" (*Salaman* v. *Warner*, (1891) 1 Q. B. 734). But no amendment will be allowed (see the report 7 Times Rep. 485), and in every respect, save as regards appeal, the judgment would appear to be final.

Dismissal for Default.—By C. O. 23, r. 13, now repealed, it was provided as follows:—

If the plaintiff, after the cause is set down to be heard, causes the bill to be dismissed on his own application, or if the cause is called on to be heard in court and the plaintiff makes default, and by reason thereof the bill is dismissed, such dismissal, unless the court shall otherwise direct, shall be equivalent to a dismissal on the merits, and may be pleaded in bar to another suit for the same matter.

Dismissal of Action.

Lord Esher, M.R., in *Armour* v. *Bate* (1891), 2 Q. B. D. p. 235, considers that O. 36, r. 32, applies to the cases provided for by this consolidated order, and that the proper form of judgment under that order is in the form given, Seton, p. 122 ; see also App. F., No. 11A, Pt. I , *ante*.

Effect of Dismissal for Default.—If the action is set down and dismissed under O. 36, r. 32 (which is the equivalent of the above Consolidated Order). then it is clear that *such dismissal may be pleaded in bar to a fresh action* (*Re Orrell, &c., Co.*, 12 C. D. 681 ; *Ker* v. *Williams*, 29 Sol. Jo. 681 ; *Armour* v. *Bate* (1891), 2 Q. B. 235).

But where the action has not been set down for trial under O. 36, r. 32 the effect of dismissal is not so clear. See the judgment of Jessel, M.R., in *Re Orrell, &c., Co., supra*, and of Kay, J., in *Magnus* v. *National Bank*, 36 W. R. 603. It seems that after a bill was dismissed a person whose name had been used without authority could obtain an order to strike out his name, &c. See *Gold Reefs, &c., Co.* v. *Dawson* (1897), 1 Ch. 115. As to the effect of an order to dismiss under O. 27, r. 1, see O. 27, r. 1 (n.) "Effect of Order."

Discontinuance.—O. 26 now forms a complete code as to the rights of *parties* to discontinue an action. See O. 26, r. 1 (n.), "Generally."

Estoppel.—"It has always been the law that a judgment by consent, *or by default*, raises an estoppel, just in the same way as a judgment after the Court has exercised a judicial discretion." *Per* Vaughan Williams, J. *Re S. American, &c., Co.*, (1895) 1 Ch. p. 45.

For the purposes of appeal such judgments would seem to be *interlocutory* not *final*, *Re Riddell*, 20 Q. B. D. p. 320 ; *Jones* v. *Insole*, 39 W. R. 629 ; *Salaman* v. *Warner* (1891), 1 Q. B. p. 737.

Stay of Proceedings, effect of.—See this (n.) J. A. 1873, s. 24, s.s. 5, p. 398.

Dismissal for default, &c., under R. S. C.—(Seton, p. 118.) The action may be dismissed for default on the part of plaintiff, in complying with the following rules :—

Default in Pleading.—If the plaintiff makes default in delivery of a statement of claim, O. 27, r. 1, (n.) "Practice."

Default in taking out Summons for Directions, O. 30, r. 8.

Notice of Trial.—If delay occurs in giving notice of trial (O. 36, r. 12).

Default in Appearing.—Where the plaintiff makes default in appearing at the trial (O. 36, r. 32 ; and see *Robinson* v. *Chadwick*, 7 C. D. 878. See also *Green* v. *Barnes*, 4 Times Rep. 324, where the plaintiff was a material witness).

Default in giving Discovery.—Where the plaintiff fails to comply with order as to discovery. (O. 31, r. 21. *Rep. of Liberia* v. *Roye*, 1 App. Cas. 139.)

Default in giving Particulars.—O. 19, r. 7, *Davey* v. *Bentinck*, (1893) 1 Q. B. 185.

Frivolous and Vexatious Actions.—Where the pleadings disclose no reasonable cause of action, or where they show action or defence to be frivolous or vexatious (O. 25, r. 4).

Default in Applying under O. 17.—Where there is change of interest under O. 17, and the plaintiff does not apply under that rule, defendant may move to dismiss. (*Wright* v. *Swindon Ry. Co.*, 4 C. D. 164.)

Cases for which no provision is made by R. S. C.—The R. S. C. do not make any provision for dismissal of an action for not giving security for costs, see 34 Sol. Jo. 192, and there are other cases such as the commencing of an action without proper authority (*Swan* v. *Mellen*, W. N. (92) 106), or abuse of the process of the Courts (see (n.) "Abuse of process," J. A. 1873, s. 24, ss. 5, Part V., *post*), which are dealt with by dismissal under the general or inherent jurisdiction of the Courts.

Dismissal for Default generally.—Forms, Seton, p. 118 ; D. C. F. p. 850.

Appeal.—For default in not prosecuting, where appellant bankrupt, see *United, &c., Co.* v. *Bassano*, 31 C. D. 630.

Default by Mortgagor.—Where mortgagor makes default in paying money at time fixed in redemption action. (*Davis* v. *D.*, 27 Sol. Jo. 277.) But in *Collinson* v. *Jeffery* (1896), 1 Ch. 644, plaintiff in a

redemption action was ordered to pay money into Court within two months of date of order, or action to stand dismissed. A mistake was made, and the Court held that the action was not dead, and extended the time. **Dismissal of Action.**

Staying Motion to Dismiss.—If it is desired to stop a motion to dismiss before it is heard, the respondent should offer to pay taxed costs of motion. (See *Thomas* v. *Palin*, 21 C. D. 360.)

Costs of Action Dismissed.—Dismissal for want of prosecution was always with costs, 4 Anne, c. 16, s. 23, but this section of the statute is repealed by the combined effect of 42 & 43 Vict. c. 59, and O. 65, r. 1, and such costs are now in the discretion of the court (*Snelling* v. *Pulling*, 29 C. D. 87 ; and see O. 65, r. 27 (50)).

Action brought without Authority.—See (n.) "Where solicitor acts," &c., *infra*, p. 370.

Divorce.—Where a petitioner obtained a decree nisi, she was ordered to make it absolute or to have the petition dismissed, *Lewis* v. *L.* (1892), P. 212.

Laches.—See *Mohan* v. *Broughton*, (1899) P. 211.

Next Friend, where no.—As to cases in which dismissal is asked for because there is no next friend of an infant plaintiff, see O. 16, r. 16, (n.) ; as to lunatics, see O. 16, r. 17 (n.).

Non-delivery of Papers.—Where the case being called on, the registrar stated that no papers had been delivered and the plaintiff did not appear, the action was dismissed with costs (*Farrell* v. *Wale*, 36 L. T. 95 ; *Birch* v. *Williams*, 24 W. R. 700 ; O. 65, r. 27 (50)) ; and as to non-delivery of papers (O. 65, r. 5).

Order for Security for Costs.—This does not affect the right to apply for dismissal, nor does the applicant have to abandon his security. *La Grange* v. *McAndrew*, 4 Q. B. D. 210 : cf. *Whitely Exerciser* v. *Gamage*, (1898) 2 Ch. 405.

Non-payment of Costs.—See the form of order given in *White* v. *Bromige*, 26 W. R. 312, Seton, p. 120, and see other cases cited on this point (n.) "Pending security," &c., J. A. 1873 : s. 24, ss. 5, Part V., p. 400, and O. 26, r. 4.

Subject-matter.—Where the value of the subject-matter of a suit was under £10 it might have been dismissed (C. O. 9, r. 1. See as to this, O. 1, r. 1, (n.) "Value of subject matter.")

Death of Sole Plaintiff.—Where a sole plaintiff died insolvent and intestate, the court, on application of sole defendant, appointed under the Ch. Pro. Act, s. 44 (now O. 16, r. 46), a person to represent estate of deceased plaintiff, so that defendant might have some one against whom to move for dismissal. (*Wingrove* v. *Thompson*, 11 C. D. 419.)

Bankruptcy.—See *Jackson* v. *N. E. R. Co.*, 5 C. D. 844 ; cited *Eldridge* v. *Burgess*, 7 C. D. p. 412, and O. 17, r. 4.

Amendment.—(?) An order to amend cannot be obtained as of course after motion to dismiss (C. O. 9, r. 12, repealed ; but see O. 72, r. 2).

Application to Dismiss.—See (n.), O. 27, r. 1, Vol. I., p. 327.

Order to Dismiss.—Seton, p. 118. D. C. F. p. 248. See cases collected under this heading, O. 27, r. 1, (n.), Vol. I., p. 328.

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See also Practice Cases cited (n.) O. 16, r. 16, Vol. I., p. 166.

Admissions by—Discovery by.—An infant cannot make admissions, but can now be interrogated, or ordered to make an affidavit of documents. So also can his next friend or guardian *ad litem*. See O. 31, r. 29.

Affidavit by.—In *Re White*, 37 Sol. Jo. 631, an application for custody the Court refused to look at an affidavit made by the infant.

Compromise by.—The court has jurisdiction to sanction a compromise in which infants are interested if satisfied that it will be for their benefit

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(*Hopgood* v. *Parkin*, L. R. 11 Eq. 80 ; *Brooke* v. *Mostyn*, 2 De G. J. & S. 373). The ordinary course is to direct a reference to chambers whether proposed compromise is beneficial, Seton, p. 832 ; but if the judge is satisfied on the evidence before him that will suffice (*Lippiat* v. *Holley*, 1 Beav. 423 ; *Wall* v. *Bushby*, 1 B. C. C. 484). Where an action is pending the terms of the proposed compromise should as a rule be brought before the court by a petition stating the terms, and verified by solicitor's affidavit, that he is advised by counsel that the terms would be beneficial to the infants (*Gray* v. *Paull*, 46 L. J. Ch. 818 ; and see *Re Birchall*, *infra*, and O. 16, r. 21). In modern practice, however, a compromise on behalf of an infant is not unfrequently sanctioned upon summons, and where there is no action pending, the sanction is often obtained upon an originating summons under the provisions of O. 55, r. 3 (f).

But the court has no power to sanction a compromise against the opinion of the next friend, or the guardian *ad litem* and counsel, and if the next friend is exercising his discretion *bonâ fide* he cannot be interfered with. Before sanctioning a compromise the court requires an affidavit by the next friend or guardian, and by the solicitor together with the written opinion of the junior counsel to the effect that they consider the proposed compromise for the benefit of the infants (*Re Birchall* (C. A.), 16 C. D. 41). On a petition for a compromise in which the interests of infants were concerned, the infants were not represented by a separate solicitor, Kay, J., ordered the matter to stand over in order that they might be represented by an entirely independent solicitor, who could state that the compromise was for their benefit (*Howe* v. *Robinson*, 34 Sol. Jo. 620). See further, O. 16, r. 21, and *Rhodes* v. *Swithinbank*, 22 Q. B. D. 577, there cited.

In *Smith* v. *King* (1892), 2 Q. B. 543, a compromise by a person who had attained twenty-one was held to be merely a renewal of a promise to that effect made by the person when an infant, and so within Infant Relief Act, 1874, s. 2.

Approval of Compromise by Court.—O. 16, r. 9A.

Settlement of Action.—An infant settled an action on terms. The next friend went on with it and recovered damages. The infant was held not bound. *Mattei* v. *Vauntro*, 78 L. T. 682.

Continuing proceedings against.—Against infant born after suit commenced, see *Peter* v. *P.*, cited O. 17, r. 4, (n.) "Infancy."

Contract.—*Re Beaufort's Will*, W. N. (98) 148 ; *Green* v. *Thompson*, (1899) 2 Q. B. 1 ; *Merriott* v. *Martin*, 107 L. T. Jo. 369. Covenant not to carry on trade.

Custody of Infants.—See "Guardianship," and notes, p. 336, *infra*.

Depriving Parent of Custody.—*Wellesley* v. *Beaufort*, 2 Russ. 1 ; *Re Fynn*, 2 De G. & Sm. 457 ; *Re Halliday*, 17 Jur. 56 ; *Re Goldsworthy*, 2 Q. B. D. p. 83 ; *Eversheд* v. *E.*, 30 W. R. 733 ; *Reg.* v. *Gyngall* (1893), 2 Q. B. 232.

Custody of Infants Act, 1873.—Under this Act the Court took into consideration, (1) The paternal right ; (2) The marital duty ; (3) The interest of the child. (*Re Taylor*, 4 C. D. 157 ; *Re Elderton*, 25 C. D. 220 ; *Re Besant*, 11 C. D. 508 ; *Re Ethel Brown*, 13 Q. B. D. 614 ; *Re Ullee*, 54 L. T. 286 ; *Re Willoughby*, 30 C. D. 324 ; *Condon* v. *Vollum*, 57 L. T. 154.) And see Custody of Children Act, 1891.

Form of Petition.—D. C. F. p. 978.

Guardianship of Infants Act, 1886.—(See the Act, p. 596). Under s. 5 of this Act the Court may, upon the application of the mother, who may apply without next friend, make such order as it may think fit regarding the custody of an infant. see *Re Elton*, 30 Sol. Jo. 744 ; *Gibbs* v. *Stevenson*, W. N. (94), 104 ; *Re X.*, (1899) 1 Ch. 526 ; but not so as to interfere with the jurisdiction of the P. D. & A. D. in divorce suits, *Re Manders*, 63 L. T. 627. The Court will in a proper case give the mother the custody although she may have been guilty of matrimonial misconduct : *Re A. and B.*, (1897) 1 Ch. 786.

And see as to this section and section 6, *Re Steel*, 38 Sol. Jo. 659,

where it was held, that, notwithstanding the Act, the primary right to the custody of a child is still that of the father.

Under section 7, p. 598 *infra*, of this Act the Court made a declaration that the respondent was unfit to have the custody of the children (*Handford* v. *H.*, 63 L. T. 256).

An order was made by Kay, J., giving the custody of an infant son of ten to its mother without fixing any limit of age, *Re Witten*, W. N. (87) 167; see also *Fleming* v. *F.*, 31 Sol. Jo. 95, where Butt, J., held that the act had no bearing on the discretion of the court in dealing with question of custody in divorce suits; but in *Skinner* v. *S.*, 13 P. D. 90 a declaration under s. 7 was made by the Divorce Court; and see *Robinson* v. *R.*, 57 L. T. 118; *Re Crookes*, W. N. (87) 29.

In *Re Scanlan*, 40 C. D. 200, two Protestant guardians were appointed to act with the mother and the children were directed to be brought up in religion of the father (a Protestant), the mother being a Roman Catholic, for this Act does not affect the rule that children must be brought up in religion of father. Cf. *Re Newton* (1896), 1 Ch. 740.

And a guardian who has been appointed by the Court will not be removed merely on the ground that he is of a different faith to that in which the infant is to be brought up. *Re Read*, 5 Times Rep. 615.

In *Re M'Grath*, the Court, whilst deciding that it had power to remove a guardian appointed by a mother after the death of the father, declined, under the circumstances, to do so; C. A. (1893), 1 Ch. 143.

Habeas Corpus.—The Court will not hand over the custody of children to an agent, unless a valid excuse for the absence of the parent is shown. *Reg.* v. *Scherscheusky*, 8 Times Rep. 571. And the applicant must show a legal right to the custody, *Re Harper*, (1895) 2 I. R. 571.

In *Ex parte Emerson*, 11 Times Rep. 218, the mother applied for the writ in order to recover possession of her illegitimate child of two years old, although she had agreed to give it up to her aunt. The writ was ordered to issue and an appeal from this order was dismissed, without deciding whether an appeal lay. See J. A. 1873, s. 25, ss. 10, p. 418.

P. D. & A. Div.—The jurisdiction of this division extends to children during infancy, *Thomasset* v. *T.*, (1894) P. 295, overruling *Blandford* v. *B.*, (1892) P. 148. See also as to its discretion as to the custody of children, the marriage of whose parents is the subject of the suit, *Handley* v. *H.* (1891), P. p. 127; *Witt* v. *W.* (1891), P. 163.

Foreign Subjects.—Where a society offered to provide funds for maintenance of infants, natives of Swaziland, who were within the jurisdiction, Court ordered reference to Chambers to appoint guardian, *Re Gootoo, &c.*, 35 Sol. Jo. 481.

Covenant as to Access.—An officer in the army covenanted in separation deed that wife should have access to children. He was ordered to India. Injunction restraining him from taking the children dissolved by C. A., *Hunt* v. *H.*, 28 C. D. 606.

Relations.—The maternal grandfather, who is bound to support the child if its parents are dead, is entitled to the custody, *Re Taylor*, 3 Times Rep. 718.

Education of Infant.—See J. A. 1873, s. 25, s.s. 10; Seton, p. 886; (n.) "Guardianship," *infra*, "Custody," *supra*.

The duty of providing education stands on the same footing as that of maintenance. Neither the father nor the mother are liable at law for their children's maintenance; but the C. D. recognizes fully the moral obligation of a father to provide for his offspring; a mother is under no such obligation. It is an obligation which can only be indirectly enforced, cf. Simpson on Infants, 2nd ed. pp. 176, 177.

The guardian of an infant may exercise a discretion as to the education of his ward; it is his duty to choose a proper school, and the education provided must be in accordance with the expectations in life of the infant, and should be moral and religious, and the greatest respect will be paid first of all to the opinions and wishes of the father, and then of the mother (see Seton, p. 886, and Simpson, *passim*; and see *Re Agar-*

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Ellis, C. A., 10 C. D. 49). And see as to a father abdicating or abandoning his right to have his child brought up in his own faith, *Re Clarke*, 21 C. D. p. 824; *Condon* v. *Vollum*, 57 L. T. 154; *Re Newton* (1896), 1 Ch. 740.

Infant wards, whose father, a Protestant, was dead, were living with their mother, a Roman Catholic, and one of their guardians, in Jersey. At the instance of the two other guardians, the court declared the children ought to be brought up as Protestants, *Re Montagu*, 28 C. D. 82. See also, *Re Violet Nevin* (1891), 2 Ch. 299, where the infant had neither father, mother nor guardian; *Re Scanlon*, 40 C. D. 200; *Re White*, 9 Times Rep. 575. Cf. the Custody of Children Act, 1891, s. 4.

Guardianship of Infants.—See Matrimonial Causes Acts, 1857, s. 35; 1859, s. 4; 1878, s. 4; 1884. s. 6; Jud. Act, 1873, s. 25, ss. 10, p. 418, *post;* Guardianship of Infants Act, 1886, and Rules, p. 596, *post;* Seton, p. 837; O. 55, r. 25, and (n.) "Custody of Infants," p. 334, *supra.*

The office of guardian of the person is distinct from that of next friend (*Harris* v. *Lightfoot*, 10 W. R. 31); but the same person may fill both; or the next friend may be appointed guardian, *Re Findlay*, 32 C. D. 221.

Jurisdiction of High Court.—By J. A., 1873, s. 25, ss. 10, each division can exercise the jurisdiction of the Court of Chancery. All divisions, even on *habeas corpus*, can now regard more than the strict right of fathers and guardians (*Thomasset* v. *T.*, (1894) P. p. 300); and the jurisdiction under the Divorce Acts extends over the whole period of infancy, *Ibid.*, p. 302. It also extends to infants who are not wards of court and who have no property, *Re McGrath*, (1893) 1 Ch. 143, C. A. The High Court of Justice has vested in it the jurisdiction of the old Court of Chancery with respect to the custody of infants, *Reg.* v. *Gyngall*, (1893) 2 Q. B. 232; *Re Elliott*, 32 L. R. Ir. 504; cf. *Armytage* v. *A.*, 67 L. T. 90. It has an absolute discretion in such a matter, but will always in its exercise, *consider above all things the welfare of the child*, *Ibid.*, and *Thomasset* v. *T.*, *supra.* See (n.) "Habeas Corpus," p. 335, *supra.*

Application for.—(O. 55, r. 2 (12).) If the property is large and there are any difficulties in administration or any disputes, proceedings should be commenced by writ or originating summons, then a summons should be taken out for the appointment of a guardian and maintenance. See also R. S. C. under the Act, p. 595, and O. 55, r. 25.

Cases on Guardianship.—The father, as natural guardian, has the right, if he wishes it, to be next friend of his infant children in an action in which they are plaintiffs (*Woolf* v. *Pemberton*, 6 C. D. 19); but the court will interfere with his rights on sufficient grounds, as to which see Simpson, 2nd ed. 148, 187. The court appointed a guardian of an English child resident in France, although she had no property in this country, in *Re Willoughby*, 30 C. D. 324; but where there is a doubt as to the infant's nationality, the Court will not interfere by appointing a guardian here, when one has been duly appointed abroad, *Re Bourgoise*, 41 C. D. 310. Where an English woman had gone through ceremony of marriage with Mahomedan, it was held that she had no legal claim to the guardianship, as the child was illegitimate (*Re Ullee*, 54 L. T. 286), but as to her right to its custody see (n.) "Mother," *infra.* In *Re White*, 9 Times Rep. 575, a guardian was appointed of an illegitimate child whose father and mother were dead.

In *Re Lane*, 30 Sol. Jo. 304, a guardian was appointed temporarily (for fourteen days) of an infant who had land in Jersey only.

Testamentary Guardian.—May apply to remove next friend and be substituted (*Hutchinson* v. *Norwood*, 31 C. D. 237; *Ex p. Nickells*, 7 Times Rep. 499).

Guardianship by Nurture.—Ends at the age of fourteen and is confined to personal custody of child, Bac. Abr., Vol. III., p. 404.

Voucher of Items of Expenditure by.—A guardian on an inquiry as to expenditure by his co-guardian in maintenance will not be called upon to vouch the details of such expenditure if it be shown the infants have been properly maintained and educated (*Re Evans*, 26 C. D. 58).

The Father.—"The Court have in numerous cases emphatically recog-

nized the father's right, as guardian by nature and nurture, to the custody of his legitimate children, but *subject to the welfare of the child; Re Salisbury*, 2 C. D. p. 31; *Agar-Ellis* v. *Lascelles*, 10 C. D. 49; 24 C. D. 317; *Smart* v. *S.*, H. of L. (1892), A. C. 425; Simpson, 2nd ed. p. 119. This right will be enforced at law by Habeas Corpus, and also in the C. D., where also an order for delivery of the infant to him may be obtained by the father on petition (see *G.* v. *L.* (1891), 3 Ch. 126, cited (n.) "Enforcing order as to custody of ward," p. 332; *Re Agar-Ellis*, 24 C. D. 317), which case shows that the court never interferes with the right of a father unless and until infant is made ward of court, and then only in very extreme cases, *Constable* v. *C.*, 34 W. R. 649; *Re Plomley*, 4 Times Rep. 256; *Re Newton* (1896), 1 Ch. 740. See also *Re A. and B., infants*, (1897) 1 Ch. p. 788.

Religion.—See (n.) "Education of Infant," p. 335; Seton, 886.

Guardian.—The legal guardian has also a right to the possession of his wards (*Re Andrews*, 8 Q. B. 153); and so also has the guardian appointed by the C. D., and any interference with his rights in this respect will be treated as a contempt of court (*Wellesley* v. *Beaufort*, 2 R. & M. 639).

In *Ex p. Nickells*, 7 Times Rep. 499, the Court gave the custody to a testamentary guardian out of the jurisdiction.

Mother.—The legal position of the mother as regards guardianship was, before the Act of 1886, cruel and unjust, see judgment of M. R. *Re X.*, (1891) 1 Ch. 526, cited; Guardianship of Infants Act, 1886, s. 2, p. 596, *post*; and *Re G.* (1892), 1 Ch. 292; *Re A. and B., infants*, (1897) 1 Ch. p. 790.

Her right to the custody of her infant child is not lost by her allowing him to remain in a charitable institution for a little over a year, *Reg.* v. *Williams*, 58 L. J. Q. B. 176. And so where the father has deserted the mother: *Reg.* v. *Barnardo* (No. 2), 58 L. J. Q. B. 522; *ibid.*, *Gossage's Case*, 24 Q. B. D. 283: or has been guilty of gross misconduct, and made unfounded and scandalous charges against her, *Smart* v. *S.* (1892), A. C. 425, and see *Hart's Divorce Bill*, (1898) A. C. 305. Under the Matrimonial Causes Act, 1857, s. 35, the Court may deprive a mother of the custody of, and of access to, her children, *Handley* v. *H.* (1891), P. 124; and after decree, *Manders* v. *M.*, 7 Times Rep. 149; or may give her the custody of children even over sixteen (*Judkins* v. *J.*, 101 L. T. Jo. 395). As to the custody of a girl child of eleven being given to a father who had committed adultery, see *Witt* v. *W.* (1891), P. 163; *Re G.* (1892), 1 Ch. 292.

If the child is illegitimate the mother has a *primâ facie* right (not absolute, *Re Ullee*, 53 L. T. 711) to its custody up to the age of fourteen in preference to reputed father, or any other person, *Reg.* v. *Nash*, 10 Q. B. D. 454; *Reg.* v. *Barnardo* (1891), A. C. 388; and this right must be recognized unless there are strong grounds for displacing her, *Re Carey* (C. A.), 10 Q. B. D. 454; *The Guardians of St. Mary Abbotts*, 4 Times Rep. 63; *Reg.* v. *Barnardo* (1891), A. C. 388; *Barnardo* v. *McHugh*, 40 W. R. 97; *Reg.* v. *Bolton Union*, 36 Sol. Jo. 255; *Reg.* v. *Lewis*, 9 Times Rep. 226; *Ex p. Emerson*, 11 Times Rep. 218; and see the Custody of Children Act, 1891.

Inquiry whether Suit for Infant's Benefit.—(D. C. F. pp. 42, 43; Seton, p. 822.) The court will order such an inquiry at request of next friend *pro hac vice*, Seton, pp. 824, 825; Simpson, 2nd ed. 471; and see as to the principle upon which an inquiry is directed, the judgment of Brougham, C., in *Nalder* v. *Hawkins*, 2 M. & K. p. 249. In *Sale* v. *S.*, 1 Bea. 586, the court on motion summarily dismissed an infant's action without directing an inquiry. As to similar inquiries where the infant is born after the commencement of the action, see O. 17, r. 4, (n.) "Infancy," Vol. I., p. 221.

Maintenance.—See (n.) "Education of infant," *supra*; Seton, p. 853; Con. Act, 1881, s. 43. The application may be by summons, see O. 55, r. 2 (12), and note; D. C. F. p. 586; as to the evidence required on the application, see O. 55, r. 25.

Maintenance in P. D. & A. Div.—This Court has jurisdiction to make an order for maintenance of a child during whole period of

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infancy, *Thomasset* v. *T.*, (1894) P. 295, overruling *Blandford* v. *B.*, (1892) P. 148.

Trust to Maintain, Bring Up, &c.—A trustee who brings up a child immorally commits a breach of trust, and the Court can administer the fund, *Re G.* (Infants), (1899), 1 Ch. 719.

Marriage.—(Seton, p. 891.) If infant is a ward of Court leave of court must be obtained (*Brown* v. *Collins*, 25 C. D. p. 61; D. C. F. p. 591).

Undertaking, Breach of—Restraining Marriage.—A gentleman paying his addresses to a ward of Court undertook to abide by any directions of the Court, but none were given. The lady on attaining her majority proposed to marry the gentleman in question. The Court restrained the party from intermarrying. The C. A. set aside the order, *Bolton* v. *B.* (1891), 3 Ch. 270.

Contempt of Court by marrying Ward.—In *Re Sampson*, 25 C. D. 482, a person made a secret marriage with a ward, he was deprived by the settlement of all interest in her property; following *Field* v. *Moore*, 7 De G. M. & G. 691.

Infant Married Woman.—As to an infant married woman suing or being sued, see (n.) "Infant Married Woman," O. 16, r. 16, Vol. I. (n.), p. 170.

Partition Action.—For form of judgment for sale in such an action where infant plaintiffs are entitled to one undivided third, see *Davis* v. *Ingram*, (1897) 1 Ch. 477.

Pauper Infant.—*Semble*, on special case shown infants may sue *in formâ pauperis* (*Lindsay* v. *Tyrrell*, 2 De G. & J. 7). See O. 16, r. 31, (n.).

Payment out of Court to.—Infant petitioners were entitled to a fund paid into Court. They were French subjects, and by French law their father was entitled to payment. The Court required evidence that such payment would be for their benefit (*Re Chatard Set.* (1899), 1 Ch. 712, cf. *Brown* v. *Collins*, 25 C. D. 56).

Receiver.—May be appointed of infant's property on petition, without suit (*Re Leeming*, 20 L. J. Ch. 550); but the more usual course is to appoint a guardian of the person and estate, who is usually required to enter into recognizances duly to account, Seton, p. 844.

Settlement on.—See O. 55, r. 26; Seton, p. 891; Infants' Settlement Act, 18 & 19 Vict. c. 43; *Seaton* v. *S.*, 13 App. Cas. 61.

Rectification.—See *Viditz* v. *O'Hagan*, 15 Times Rep. 416.

Ward of Court.—(See J. A. 1873, s. 34, ss. 3; Seton, p. 843.) By being made a party to a suit, an infant becomes a ward of court (*Gynn* v. *Gilbard*, 1 Dr. & Sm. 356; *Re Leigh*, 40 C. D. 290); and note, that persons served with the judgment are parties and may attend proceedings (rr. 40, 43, *infra*). An order made on summons, or petition for a guardian (*Stuart* v. *Bute*, 9 H. L. 440), or a mere guardianship summons (*De Pereda* v. *De Mancha*, 19 C. D. 451); or a similar order for maintenance (*Re Graham*, 10 Eq. 530; *Re Newton* (1896), 1 Ch. 740); or payment into court of fund of infant under Trustee Relief Act (*Re Benand*, 16 W. R. 538), will also have the same effect. Money paid to separate account of an infant in an administration action to which she was *not* a party makes her ward of court (*De Pereda* v. *De Mancha*, *supra*). The jurisdiction exists from fact that infant is a British subject, and not from the fact of there being property under control of the court (*Re A. B.*, 29 Sol. Jo. 669; *Brown* v. *Collins*, 25 C. D. 60; *Re McGrath* (1893), 1 Ch. 143 (C. A.)), therefore where such an infant is an alien the court on a petition by the infant alien for payment out will not require a settlement, but will pay it to the person proved to be entitled to receive it according to foreign law (*Brown* v. *Collins*, 25 C. D. 56, but see (n.) "Payment out," &c., *supra*). But the jurisdiction will generally speaking *only be exercised* where the infant has property (*Wellesley* v. *Beaufort*, 2 Russ. 21; and see D. C. P. 1113; Seton, p. 843).

But payment in of an infant's legacy under Legacy Duty Act, or of purchase-money under L. C. C. Act, belonging to an infant, or an order approving a settlement under Infant Settlements Act, does not constitute the infant a ward of Court (Simpson, Infants, 2nd ed. 340), nor an order under Divorce Act. s. 35. *Hude* v. *H.*, 13 P. D. 166.

Ward of Unsound Mind.—The jurisdiction of the court over its infant wards is not ousted by their being in such a state as would, if they were adult, attract the jurisdiction in Lunacy (*Re Edwards*, 10 C. D. 605).

Ward concealed.—Any person capable of giving information as to whereabouts of concealed ward may be ordered to attend before a judge (*Rosenberg* v. *Lindo*, 48 L. T. 478).

Marriage of Ward, &c.—See (nn.) "Marriage," and "Settlement on," p. 338, *supra*.

Communication with.—See *Scott* v. *Padwick*, 4 Times Rep. 569.

Taking Ward out of Jurisdiction.—Leave will be given if for benefit of ward, and if there is security by the appointment of a guardian resident in England, that future orders of court will be obeyed (*Re Callaghan*, 28 C. D. 186). An injunction may be granted against taking an infant out of the jurisdiction of the Court where a petition for the dissolution of marriage is pending (*Harris* v. *H.*, 63 L. T. 262).

Enforcing order as to Custody of Ward.—An order having been made in an action to make an infant a ward, that the mother should deliver the child to the father's nominee on a certain day, which order had been disobeyed, the Court enforced the order by directing the serjeant-at-arms to obtain the custody of the child; such an order being countersigned by the Lord Chancellor, will be carried out by the officer named (*G.* v. *L.* (1891), 3 Ch. 126; Seton, F. 3, p. 889).

Ward proposing to take Vow.—See *In the matter of Gills, Minor*, L. R. Ir. 27 Ch. D. 129.

JUDGMENTS AND ORDERS.

Liberty to Apply.—In every order of the court, *where the order is not final*, Chitty, J., in *Penrice* v. *Williams*, 23 C. D. 353, liberty to apply to the court is implied without its being expressly reserved (*per* Fry, J., *Fritz* v. *Hobson*, 14 C. D. 542, 561). Such liberty is not implied in favour of a defendant against whom the action has been dismissed, except for the purpose of enforcing the terms of the order (*Huntley* v. *Link*, 26 Sol. Jo. 59).

Speaking to Minutes.—When at the hearing liberty is given to mention the case again on the minutes, it must be done at least within a fortnight, otherwise the parties must give notice of motion specifying the alterations (*Hood* v. *Cooper*, 26 Bea. 373); but, if such liberty is not given, the whole matter must be considered as concluded, and the registrar having completed the minutes, any party dissatisfied may then give notice of motion specifying the subject of complaint (*Prince* v. *Howard*, 14 Beav. 208). See also D. C. P. 806.

Varying Minutes.—In drawing up a judgment the registrar may, by consent, permit such alterations to be made in it as he believes the court would sanction, and which are binding on the parties (*Davenport* v. *Stafford*, 8 Beav. 503; see *Blake* v. *Harvey*, 29 C. D. 827); or he may require the matter to be mentioned to the court (Seton, p. 165). But if after the Registrar has settled the minutes there is any difficulty or dispute, an application should be made to the court which made the order, and before the order is past and entered, by motion on notice, stating the matters objected to, to vary the minutes (*General Share, &c., Co.* v. *Wetley, &c., Co.*, 20 C. D. 130; *British Dynamite Co.* v. *Krebs*, 25 W. R. 846; Seton, p. 164; D. C. P. 805). On such motion the only question to be argued, is what was the actual order made, except where both parties consent to something being added, or it cannot be ascertained what order was made, and then the case may be put in the paper to be argued again (Mem. W. N. (76) 296). This is "a very important rule," *per* Bowen, L.J., *S. Wales, &c., Co.* v. *Davies*, 31 Sol. Jo. 110. The party moving should apply to the registrar, who will forward a copy of his note to the judge.

In *James* v. *Jones*, 67 L. T. 584, the registrar had drawn the minutes. The plaintiff then found that certain documents which he

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alleged had been admitted and put in evidence at the trial had been omitted. The registrar refused to alter the minutes. The plaintiff moved to vary them. Kekewich, J., refused the application. The plaintiff appealed. The C. A. dismissed the application, for that Ct. will not interfere with the opinion of a judge as to drawing up minutes of his own judgment. The proper course was to appeal from the judgment as it stood, and ask at the hearing for leave to use the documents omitted. In this case an appeal against the judgment had in fact been entered before the judgment was drawn up.

Master's Report.—There is no such thing in common law as a motion to vary (*per* Lindley, L.J., 30 C. D. p. 241; but when a matter of equity is being dealt with by a common law Court the equitable practice should be followed as nearly as possible, and a Master's (Q. B. D.) Report may be varied. *Walmsley* v. *Mundy*, 13 Q. B. D. 807; and cf. *Lawrie* v. *Lees*, 7 App. Cas. p. 35. So also a Registrar's in P. D. & A. Div., *The Kate*, (1899) P. 165).

Indorsement on Brief.—Difference in Terms of.—Where he indorsements on briefs differ, and a dispute arises as to the order made, if the order has been made by the court after argument, then the note of the registrar will determine the matter; but where it is an arranged order, and the court had nothing to do with the terms thereof, then the court will treat the matter as though no order had been made, and the costs of affidavits filed for the purpose of showing what order the parties intended will not be allowed. (*Per* Pearson, J., W. N. (84) 91.)

It is the duty of counsel to take notes of judgment, and an affidavit of the grounds of judgment should not be made. (*Ex p. Skerratt*, 28 Sol. Jo. 376.)

Judgment by Consent.—A judgment by consent acts as an estoppel, *Re S. American, &c., Co.*, (1895) 1 Ch. 37, and see as to this *Stewart* v. *Kennedy*, and *Wilding* v. *Sanderson*, *infra*. No order made by consent of parties is appealable, J. A. 1873, s. 49, Part V., p. 437. But a consent order can be set aside on any ground that would invalidate an agreement, *Huddersfield B. Co.* v. *Lister*, *infra*; *Re S. American, &c., Co.*, (1895) 1 Ch. p. 44. If consent has been *given by mistake*, it may be withdrawn at any time *before* the judgment is passed and entered (*Holt* v. *Jesse*, 3 C. D. 177; *Rogers* v. *Horn*, 26 W. R. 432; *Lewis* v. *L.*, 45 C. D. 281; *Hickman* v. *Berens*, (1895) 2 Ch. 638; *Stewart* v. *Kennedy*, 15 App. Cas. 75, 108); *Moore* v. *Peachey*, 66 L. T. 198, where a garnishee order made by consent was set aside; but when a *final* judgment has been passed and entered the Court cannot set it aside unless a fresh action is brought for that purpose, although it has been taken by mistake, *Ainsworth* v. *Wilding* (1896), 1 Ch. 673, *Wilding* v. *Sanderson*, (1897) 2 Ch. 534; *Huddersfield B. Co.* v. *Lister* (1895), 2 Ch. 273; and cf. *Att.-Gen.* v. *Tomline*, 7 C. D. 388; and *Davis* v. *D.*, 13 C. D. 861, and although the mistake as to a written contract be on one side only, it may be impeached, if induced by the other party. *Wilding* v. *Sanderson*, *supra*. Different considerations apply to interlocutory orders, and to "slips" under O. 28, r. 11; cf. *Ainsworth* v. *Wilding*, *supra*. The rule in both C. D. and Q. B. D. is now the same, and a consent given by authority of client cannot be withdrawn unless there has been mistake or surprise (*Harvey* v. *Croydon, &c.*, 26 C. D. 249; *Elsas* v. *Williams*, 52 L. T. 39). As to when the mistake is on one side only (*Mullins* v. *Howell*, 11 C. D. 763; *Barker* v. *Purvis*, 56 L. T. 131; *Gilbert* v. *Endean*, 9 C. D. 259; *Re West Devon, &c., Co.*, 38 C. D. 51 (C. A.); *Hewitt* v. *The Hull, &c., Society*, 4 Times Rep. 35; *Wilding* v. *Sanderson*, *supra*; and see *Re Leonard*, 107 L. T. Jo. 408). As to extending or altering such an order, see *infra*. See also (n.) "Compromise," *supra*, p. 326.

Power to Consent.—The next friend of an infant plaintiff cannot without leave of Court consent not to appeal, *Rhodes* v. *Swithinbank*, 22 Q. B. D. 577: see O. 16, r. 21. If a third party claiming moneys attached consented to the matter being decided summarily there is no appeal, *Eade* v. *Winser*, 47 L. J. C. P. 584; see O. 57, r. 8. As to

power to consent of persons authorised under O. 16, r. 9, to defend on behalf of numerous parties, see *Rees* v. *Richmond*, 62 L. T. 427, cited (n.) "Power to consent," &c., Vol. I., p. 155.

Co-defendant.—Judgment by Consent against one.—See *M'Leod* v. *Power*, 67 L. J. Ch. 551.

Authority of Counsel.—Counsel has complete authority over the suit, the mode of conducting it, and all that is incident to it; such as, withdrawing the record, withdrawing a juror, calling no witnesses, assenting to verdict (*Matthews* v. *Munster*, 20 Q. B. D. 141); agreeing not to appeal, *Re West Devon, &c., Co.*, 38 C. D. 51; *Rhodes* v. *Swithinbank*, *supra*; consenting to compromise any matter within the action, *Ellender* v. *Wood*, 32 Sol. Jo. 628; *The Alliance, &c., Syndicate* v. *MacIvor & Co.*, 7 Times Rep. 599; *Kempshall* v. *Holland*, 14 R. 336; unless he has received positive instructions to the contrary, *Scheyer* v. *Wontner*, 90 L. T. Jo. 116, and cf. *Lewis* v. *L.*, 45 C. D. 281, where counsel were endeavouring to give effect to what they supposed (erroneously) was the intention of the parties; and so as to other matters which properly belong to the suit and the management thereof and conduct of the trial; but he has no authority over matters collateral to the suit (*Swinfen* v. *Chelmsford*, 8 W. R. 545; and see *Swinfen* v. *S.*, 26 L. J. C. P. 97; *Strauss* v. *Francis*, L. R. 1 Q. B. 379; *Matthews* v. *Munster*, 20 Q. B. D. 141; Seton, p. 112). As to the mode of ascertaining what was said by counsel at the time of an alleged compromise, it seems that counsel should attend the Court and make a statement, *Hickman* v. *Berens*, (1895) 2 Ch. 638; *Wilding* v. *Sanderson*, (1897) 2 Ch. p. 539.

Force and Effect of Consent Order.—An order by consent in an action is not a contract, but it is sufficient evidence of the contract upon which it is based, and such contract is not less a contract and subject to the incidents of a contract because there is superadded the command of a judge (*Wentworth* v. *Bullen*, 9 B. & C. 840; *Lieeesley* v. *Gilmore*, L. R. 1 C. P. 570; and see *Conolan* v. *Leyland*, 27 C. D. p. 638. It stands on same footing as a release. *per* Cotton, L.J., in *Gering* v. *Lloyd*, 3 Times Rep. p. 456). A consent order may be pleaded as an estoppel, *Serrao* v. *Noel*, 15 Q. B. D. 549; *Re South American, &c., Co.*, (1895), 1 Ch. 37; but a consent order dismissing an action for want of prosecution, is no bar to another action between the same parties, for the same matter, unless it proceeds upon a compromise. *Magnus* v. *Nat. Bank*, 36 W. R. 602. In bankruptcy the court may go behind it, *Ex p. Lennox*, 16 Q. B. D. 315; *Re Hawkins*, (1895) 1 Q. B. 404. As to its not being capable of registration as a "judgment," see (n.) "Filing," &c., *infra*.

Consent Order Staying Proceedings.—See *Joynt* v. *MacCabe*, *infra*.

Extending or Altering Consent Order.—An order made by consent cannot be extended or altered without consent. *Australasian Automatic Weighing Machine Co.* v. *Walter*, W. N. (91) 170, except in cases of *mistake*, &c., as to which see *supra*.

Drawing up Consent Order.—Where an order has been arranged between the parties, it should appear, on the face of it, that it is an order by consent (*Michel* v. *Mutch*, 34 W. R. 251; cf. *Barker* v. *Purvis*, 56 L. T. 131, where this was not done). In the Q. B. D. the consent upon which the order is drawn up *must first* be initialled by the judge or master making the order (P. M. R. (20) Vol. I., Part II.).

Entry of Evidence in.—The evidence should not be entered as read. (*Blakey* v. *Shaw*, 31 Sol. Jo. 555.)

Filing and Registering Consent Order for Judgment.—All consent orders for judgment must be filed: see Debtors Act, 1869, s. 27.

"*Judgment.*"—"*Order.*"—In *Joynt* v. *MacCabe*, (1899) 1 I. R. 104, it was held in Ireland that a consent *order* staying proceedings is not a "judgment" and cannot be registered as such; but see *Shaw* v. *Hertford County Co.*, (1899) 2 Q. B. 282.

Entry of Judgment.—Where defendant appears by solicitor, or has not appeared, or appears in person cf. O. 41, rr. 9, 10.

Appeal from.—No order by consent can be appealed from except by leave (J. A. 1873, s. 49, p. 437).

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Setting Aside.- A judgment signed by consent cannot be set aside at instance of plaintiff and defendant, to prejudice of a third party: *The Bellcairn*, 10 P. D. p. 165; and see *Hammond* v. *Schofield*, (1891) 1 Q. B. 453; *Munster* v. *Cox*, 10 App. Cas. at p. 691, and *Emeris* v. *Woodward*, *Gilbert* v. *Endean*, 9 C. D. 259.

Withdrawal of Consent.—See *A.-G.* v. *Tomline*, 7 C. D. 388; *Harvey* v. *Croydon, &c.*, 26 C. D. 249.

Ex parte Orders.—*Setting Aside.*—The application should be to the judge to whom the cause was originally assigned, *Serff* v. *Luft*, 28 Sol. Jo. 432.

Order "per incuriam."—An order made without jurisdiction, if not appealed against, must stand (*West* v. *Downman*, 27 W. R. 697).

LUNATICS, etc.

See also O. 16, r. 17, Vol. I., p. 173.

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Administration.—The practice where a grant has been made to a next of kin, and such next of kin becomes insane, is fully stated, *In the Goods of Cooke* (1895), P. 69.

Attachment.—The Master in Lunacy has now power to order the attachment of a person, alleged of unsound mind, who has failed to comply with an order to attend and be examined (*Re B.* (1892), 1 Ch. 459).

Charging Order.—As to charging order, see O. 46, r. 1, (n.) "Fund in Lunacy," and *Horne* v. *Fountain*, 23 Q. B. D. 264; *Re Plenderleith* (1893), 3 Ch. 332, as to enforcing on death of lunatic; *Re Leavesley*, (1891), 2 Ch. 1; and cf. *Re Cathcart* (1893), 1 Ch. 466.

Committee.—The committee of a lunatic is only in the position of a bailiff, and he is not personally liable for the value of goods supplied to him for the purpose of carrying on the business of the lunatic, *Isaacs* v. *Chinery*, 74 L. T. 320—468. As to authorising committee to enter into covenants, *Re Ray* (1896), 1 Ch. 468. As to power of leasing under Settled Land Act, see *Re Salt* (1896), 1 Ch. 117. The Court will appoint as committee the person most likely to secure comfort of lunatic (*Re Davy* (1892), 3 Ch. 38.) The husband of a woman found of unsound mind cannot, as of right, claim to be appointed her committee, either jointly or solely, *Ibid.* Appointment of out of jurisdiction, *Re Hopper*, 66 L. J., Ch. 569. As to election by committee *see* (n.) "Election," *infra*.

Contract by.—A contract entered into by an insane person is binding unless contractee knew that the contractor was insane, and the defence in an action for breach must allege that the defendant was insane *to the knowledge* of the plaintiff (*Imperial, &c., Co.* v. *Stone* (1892), 1 Q. B. 599). As to implied contract to pay costs, see (n.) *infra*.

Contract for Sale.—Subsequent Lunacy.—Vesting Order.—See *Re Pagani* (1892), 1 Ch. 236.

Conversion.—See *Re Matson*, (1897) 2 Ch. 509.

Costs in Lunacy.—Lunacy Act, 1890, s. 109, Wood-Renton on Lunacy, p. 378. See the five points as to the questions to be considered in deciding how the costs of a petition in lunacy should be borne (*Re Cathcart* (1892), 1 Ch. pp. 558-561, (1893) 1 Ch. p. 471).

Inquiry as to Sanity—Costs.—Solicitors who have acted fairly and with propriety in defending person whom it is sought to have declared lunatic are entitled to their costs whatever may be the result of the enquiry. *Re Jones*, 34 Sol. Jo. 661.

Implied Contract to Pay.—In the case of money expended for the necessary protection of the person and estate of a lunatic, the law will imply a contract (*Williams* v. *Wentworth*, 5 Bea. 325), and so where a person so found dies before committee appointed, the costs incurred are a debt to be paid out of the estate (*Re Meares*, 10 C. D. 552).

Habeas Corpus.—Application for, on behalf of criminal lunatic, but not authorized by him. As to liability of applicant for costs, see *Re Carter*, 95 L. T. Jo. 37.

Costs of Opposing Bill in Parliament.—See *Re Blake*, 72 L. T. 280, and J. A. (1873), s. 51.

Creditors, Rights of.—In the management of the estate of an insolvent lunatic, the practice is to provide for the maintenance of the lunatic, before considering the claims of creditors (*Re Pink*, 23 C. D. 577; and cf. *Re Price*, 34 C. D. 603; *Re Plenderleith* (1893). 3 Ch. 332: *Re Farnham*, (1896) 1 Ch. 836; but not of his wife, *Re Winkle*, (1894) 2 Ch. 519). But the Court will not deprive creditors of their right to issue execution, seize, and sell, the property of a lunatic, which at the time of seizure is not in the custody of the Court, *Re Clarke*, (1898) 1 Ch. 336.

Payment of Debts.—The power of making orders for rendering the property of a lunatic available for his benefit is not to be used for the purpose of paying his debts, *Re Price*, 34 C. D. 603; Lunacy Act, 1890, s. 116, s.s. (5), Wood-Renton on Lunacy, p. 366.

Debt of Honour.—The Court will recognise debts of honour on part of lunatic and will order payment thereof by way of bounty out of his estate. The committee should petition or be joined as co-petitioners: *Re Whitaker*, 42 C. D. 119.

Debts Implied.—See (n.) "Costs," *supra*, "Maintenance," *infra*.

Crown and A.-G. of Duchy of Lancaster.—The A.-G. of Duchy of Lancaster is not entitled to attend proceedings in the lunacy of an illegitimate and unmarried lunatic resident in Lancashire and possessing copyholds held of the Duchy of Lancaster, the rights of the Queen being sufficiently represented by the Queen's A.-G. (cf. *Re Kershaw*, 21 C. D. 613).

Curator.—The foreign curator of property and person of a lunatic resident out of jurisdiction is not entitled, as of right, to an order for the transfer to him of English Stock, &c.: *Re Knight*, (1898) 1 Ch. 257.

Discovery.—*Inspection of Documents.*—(See O. 31. r. 12, (n.) "Next friend," &c.: *Ibid.* r. 29: Lunacy Act, 1890, s. 6.) A lunatic before being so found had deposited bonds, &c., with a company: they were in a box of which the lunatic had one key and the company the other. The next of kin presented a petition asking an order for inspection; the court appointed official solicitor to inspect and schedule (*Re Campbell*, 13 C. D. 323).

Inspection of Documents in possession of Court or Committee.—Where certain documents, the property of a deceased lunatic, had been deposited with a master, and some with the registrar in lunacy, the C. A., on petition by the plaintiff in an action in the Exchequer Division, supported by affidavit showing he had a *primâ facie* title to the lunatic's property, made an order for production (*Re Smyth*, 15 C. D. 286, 16 C. D. 673).

Where an action was brought against the committee of a lunatic to enforce an agreement entered into by her in her private capacity as well as in that of committee, the committee was ordered to produce briefs and notes on proceedings in lunacy (*Re Brown*, 28 W. R. 575; and cf. *Vivian* v. *Little*, 11 Q. B. D. 370).

And on an "*ex parte*" application an order was made in lunacy directing the proper officer to attend the trial and produce documents kept at Lunacy Office, and that solicitor of applicant should be at liberty to inspect at Lunacy Office. *Re Shearwood*, 82 L. T. Jo. 137.

The general rule in lunacy is to allow inspection by any person claiming an interest in the property of a deceased lunatic or alleged lunatic, if he can satisfy the Court he requires it for some reasonable and proper purpose, and the question of privilege cannot arise. But the Court will act with perfect impartiality, and not give one litigant an advantage over the other. *Re Strachan*, (1895) 1 Ch. 439 (C. A.).

If the Court has been induced to act in the matter of the lunatic by the committee or other person, it would seem that the legal personal representative of the lunatic would have a right to see the affidavits and exhibits on which the Court was induced to act: *Re Hinchcliffe*, (1895) 1 Ch. 117; cf. *Sloane* v. *Britain, &c.*, (1897) 1 Q. B. 185.

A report made by a medical man on an examination under Lunacy Act, 1891, s. 26, ss. 2, is in the nature of a proof only and the solicitors of the lunatic are not entitled to see it, *Re Bathe*, (1892) 3 Ch. 194.

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Election.—The High Court has jurisdiction to elect for a person of unsound mind (*Wilder* v. *Pigott*, 22 C. D. 263). In the case of a lunatic having a committee, the Court under its general jurisdiction, may order the committee to elect: *Re Sefton*, (1898) 2 Ch. 378.

Guardian.—The Chancery Division has no jurisdiction to appoint a guardian to a person of unsound mind, but *only, by way of administering a trust, to direct the property of such a person to be applied for his maintenance.* (*Re Bligh*, 12 C. D. 364; *Re Brandon's Trusts*, 13 C. D. 773; and see *Re Grimmett's Trusts*, 56 L. J. Ch. 419; Pope on Lunacy, 2nd ed. pp. 234, 235; Wood-Renton on Lunacy, p. 266.) And this is the order now usually made (*Re Brandon's Trusts*, 13 C. D. 773; *Re Tver*, 32 C. D. 39; *Re Silva*, 58 L. T. 46). See (n.) "Maintenance in C. D.," p. 345, *infra*.

Guardian ad litem.—See (n.) "Action against," Vol. I., p. 174. See D. C. F., pp. 55, 56. The order is made by virtue of the jurisdiction in Chancery and not in lunacy (Pope, 2nd ed. 234). If default is made by defendant in getting guardian *ad litem* appointed, the plaintiff must apply, see O. 13, r. 1 (n.); cf. *Fry* v. *F.*, 15 P. D. 50.

Habeas Corpus.—A rule "nisi" for habeas corpus was granted to bring up a person stated to be illegally detained. It was discharged. See *Re Dell*, 91 L. T. Jo. 375. See also *Re Carter*, 95 L. T. Jo. 37; and this (n.), *supra*, p. 342.

Infant.—*Ward of Court, of Unsound Mind.*—The jurisdiction of the court over an infant ward is not ousted by his being in such a state as would, if he were adult, attract the jurisdiction in lunacy (*Re Edwards*, 10 C. D. 605).

Infant Trustee.—The jurisdiction of the High Court as to any lunatic trustee or mortgagee who is an infant is not affected by the provisions of the Lunacy Act, 1890, as to vesting; Lunacy Act, 1890, s. 143.

Injunction.—An order for an injunction or receiver can be very summarily obtained in case of need for the protection of property of a lunatic. *Re Clarke*, (1898) 1 Ch. p. 341. In an action *J.* v. *S.* (1894), 3 Ch. 72, an injunction was granted restraining a lunatic partner from dealing with the assets, &c.

Inquisition.—*Application for Examination.*—An order for examination, opposed by alleged lunatic, is not to be made without great caution (*Re B.* (1891). 3 Ch. 274). Foreigner out of jurisdiction, *Re Soltykoff*, 33 L. J. N. C. 423.

Inquiry.—Order to attend for Examination.—Attachment.—B. was ordered by a Master to attend for examination by a medical man. She failed to do so. A writ of attachment was moved for before the L.JJ. and granted (*Re B.* (1892), 1 Ch. 459). See (n.) "Attachment," *supra*; as to next of kin attending inquiry, see *Re Lanwarne*, 30 W. R., 759.

Inquiry.—Costs.—See *Re Cathcart* (1893). 1 Ch. 466, and p. 342, *supra*.

Issue Directed.—*Writ not Necessary.*—Where an issue is directed to be tried in the High Court under Lunacy Act, 1890, s. 94, a writ need not be issued, *Re Scott*, 27 C. D. 116.

Lunacy after Action Commenced.—*Plaintiff found Lunatic.*—Every step and every order taken or made in the suit after the inquisition is irregular and void *Beall* v. *Smith*, L. R. 9 Ch. p. 85; and see *Green* v. *Pratt*, 41 L. T. 30; O. 17, r. 4 (n.) "Lunacy," Vol. I., p. 221).

In *Powell* v. *P.*, 26 Sol. Jo. 465, an ejectment action was instituted by a plaintiff, a lunatic not so found, by his next friend. After the date of the writ the plaintiff was found a lunatic by inquisition, but no committee was appointed; on a motion for a receiver, Chitty, J., held that the motion was irregular and void, and that application must be made in lunacy for appointment of committee before action could be properly continued. Cf. *Waterhouse* v. *Worsnop*, 59 L. T. 140.

Defendant found Lunatic.—Action against "B," who was afterwards found lunatic, his committees were added as defendants. Verdict for plaintiff. The committees applied for stay of execution to enable them

to apply to Master in Lunacy for leave to pay money into court out of lunatic's estate, which the C. A. granted for 14 days, *Burt* v. *Blackburn*, 3 Times Rep. 356.

Lunatic served with Judgment and entering appearance.—In *Cutbush* v. *C.*, 37 Sol. Jo. 685, a partition action, C. was served with judgment by the plaintiff's solicitors, who on the instructions of his mother, entered an appearance for him. On the further consideration it appeared that C. was confined as a lunatic. A guardian *ad litem* was appointed, and the person of unsound mind appearing and consenting to be bound he was declared a trustee within the Act and a person appointed to convey. Cf. (n.) "Partition," *infra*.

Maintenance of.—*Maintenance (past).*—Lunacy Act, 1890, ss. 108-116; Wood-Renton on Lunacy, 370-376. *Re Evans*, 21 C. D. 297; *Re Lees*, 26 C. D. p. 500; *Re Hirst*, 67 L. T. 702. *Ib.* (No. 2), 68 L. T. 557; as to allowances to relatives, *Re Darling*, 39 C. D. 208).

A claim for past maintenance is simply a debt of the lunatic's, and the court will not pay more than six years' arrear out of his estate (*Re Harris*, 49 L. J. Ch. 327; *Re Wearer*, 21 C. D. 615; *Re Ward*, 29 L. J. Ch. 784; *Re Rhodes*, 44 C. D. 94). But an obligation to pay for maintenance will be implied, if supplied with intention that re-payment should be made, see *Re Rhodes*, 44 C. D. 94.

Pauper Lunatic.—See Lunacy Act, 1890, s. 299; Lunacy Act, 1891, s. 22; Seton, p. 910. The claim by guardians of poor for past maintenance of pauper lunatic become entitled to property, constitutes a debt of the lunatic to the guardians. *Re Watson*, (1899) 1 Ch. 72, and extends to six years' maintenance (*Re Marman's Trusts*, 8 C. D. 256; *Re Newbegin*, 36 C. D. 477; from time of commencement of action. *Re Watson*, *supra*. And as to recouping to the public the expense of keeping a lunatic in New Zealand, *Re Ogilvie*, 39 Sol. Jo. 315; *Suffolk Asylum, &c.* v. *Stow Union*, 45 W. R. 620.

If a receiver has been appointed, guardians should not attempt to enforce an order made under s. 299 of Lunacy Act, 1890. *Winkle* v. *Bailey*, (1897) 1 Ch. 123.

Collaterals—Allowance to.—The Court does not deal benevolently with property of lunatics, and applications for allowances by collaterals will be discouraged. *Re Darling*, 39 C. D. 208.

Maintenance pending Inquiry.—*Re Bullock*, 35 W. R. 109.

Maintenance in C. D.—The C. D. has power to give directions for maintenance of persons of unsound mind not so found when it has property belonging to such person under its control (see (n.) "Guardian," *supra*). But the property must be small (*Gillbee* v. *G.*, 1 Phill. 121; *Vane* v. *V.*, 2 C. D. 124; Lunacy Act, 1890, s. 116, s.s. (2)). The orders made in Chancery range from simple directions for payment of dividends to some person on behalf of lunatic to directions for appointment of a *quasi* guardian of person and estate (Wood-Renton on Lunacy, p. 462; Pope, 2nd ed. p. 236). This Division has jurisdiction to grant maintenance out of *capital* of person of unsound mind (*Re Tver's Will*, 32 C. D. 39; *Re Barlow's Trust*, 36 C. D. 287). In *Strangways* v. *Read*, (1898) 2 Ch. 419, the executors of deceased lunatic brought an action against the committee of the estate to enforce their claim for money paid in advance for maintenance.

Partition.—*Next Friend.*—When an action touching real estate is *primâ facie* for benefit of person of unsound mind, the Court will not stop it "in initio," on the mere suggestion that it is not for his benefit; but when the action comes for trial the Court will carefully consider his interest. *Porter* v. *P.*, 37 C. D. 420 (C. A.), explaining *Halfhide* v. *Robinson*, L. R. 9 Ch. 373.

Request for Sale.—The next friend of a person of unsound mind may in a partition action ask for the sale of real estate, Partition Act, 1876, s. 6. *Porter* v. *P.*, *supra*; and see *Re Bolton*, W. N. (88) 243.

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See further *Willis* v. *W.*, 38 W. R. 7; *Crook* v. *C.*, W. N. (90) 26; cf. *Cutbush* v. *C.*, 37 Sol. Jo. 685, *supra*.

And where a lunatic, out of the jurisdiction, was tenant in tail of property sold, the Court declared him a trustee, made a vesting order and ordered chief clerk to convey (*Caswell* v. *Sheen*, 69 L. T. 854).

Payment out of Court.—In *Re De Linden*, (1897) 1 Ch. 453, an order was made, by Stirling, J., for payment out of a fund to which a lunatic ward of a foreign court was entitled; distinguishing *Re Barlow*, 36 C. D. 287.

Receiver.—May be obtained on summons before a Master in Lunacy, Rules in Lunacy, 1892, r. 19; Wood-Renton, Lunacy, p. 362. As to case of person "lawfully detained," see Lunacy Act, 1890, s. 116 (c.), and *Re B. A. S.*, (1898) 2 Ch. 392. The C. A. appointed a receiver pending an inquisition in a case of urgency and "ex parte," *Re Pountain*, 37 C. D. 609. See *Re S.*, W. N. (90), 207. As to effect of appointment on right of execution creditor where a receiver has possession and the sheriff not, *Re Winkle* (1894), 2 Ch. 519. But where the sheriff is in possession before receiver, see *Re Clarke* (1898), 1 Ch. 336. A receiver of dividends on bank stock may be appointed, but it is not usual, *Re Browne* (1894), 3 Ch. 412.

Where a receiver has been appointed of the funds of a lunatic in a pauper asylum, the guardians will be restrained from levying a distress warrant against trustees of the fund in order to enforce a magisterial order, *Winkle* v. *Bailey*, (1897) 1 Ch. 123.

Sale.—*Of Lunatic's Estate.*—Lunacy Act, 1890, s. 120. The Court may authorise sale of, in consideration of rent-charge (*Re Ware* (1892), 1 Ch. 344).

Sequestration Order.—As to sequestration, see *Robinson* v. *Galland*, 5 Times Rep. 504.

Service.—*Of Notice of Motion on.*—*Re Pepper*, 32 W. R. 765, cited O. 9, r. 5, Vol. I.

Of Order out of Jurisdiction.—*Inquiry.*—*Liberty to Next of kin to attend.*—On a petition for an inquiry in the matter of an alleged lunatic residing abroad, the court dispensed with the lunatic's presence, directed the order to be served on her by registered letter, and declined to make an order as to next of kin being at liberty to attend (*Re Lanwarne*, 30 W. R. 759).

Dispensing with.—See *Re Lanwarne*, *supra*, and Rules in Lunacy, 1892, r. 24.

Settled Land Act.—*Petition against Bill.*—By virtue of J. A. 1873, s. 51, a Judge of the C.A. may make an order under the S. L. A. 1882 and 1884, s. 36, authorising a petition against a bill affecting the estate of a lunatic, and that the costs be a charge under s. 36 (*Re Blake*, 72 L. T. 280).

Specific Performance.—*Covenant.*—Action against person of unsound mind for specific performance of agreement to grant lease, with covenant for quiet enjoyment (*Cowper* v. *Harmer*, 57 L. T. 714).

Stay of Proceedings.—Where a petition in lunacy is pending, the Court in Lunacy will, in a proper case, stay proceedings against the lunatic, *Hartley* v. *Gilbert*, 13 Si. 596. As to stay of proceedings taken against persons doing anything in pursuance of Act, see Lunacy Act, 1890, s. 330 (2). Wood-Renton on Lunacy, p. 694.

Stock.—*Transfer of.*—Court has a discretion as to ordering transfer of Stock standing in name of lunatic. Lunacy Act, 1890, ss. 90, 96, 134. *Re Knight*, (1898) 1 Ch. 257.

Taxation.—*Discharge of Order.*—A solicitor obtained an order to tax against his client, but did not state the fact that she was of unsound

mind, and that a petition was pending in lunacy. The order was discharged, but under the circumstances without costs (*Re Armstrong* (1896), 1 Ch. 536).

Testimony.—*Perpetuation of* (O. 37, r. 35).—The wife of a lunatic had, so it was alleged, an illegitimate child. It was desired to perpetuate testimony as to the illegitimacy of her child. The Court suggested a settlement should be made on the children of the lunatic, and the question of illegitimacy could then be raised and the testimony perpetuated (*Re Stoer*, 9 P. D. 120).

Trustee Acts.—(Seton, p. 1045.) The material sections of the Trustee Acts, 1850, 1852, have been embodied in the Lunacy Act, 1890, ss. 133 to 143; see Wood-Renton on Lunacy, pp. 446—462; and see the Trustee Act, 1893, s. 10; Settled Land Act, 1882, s. 328.

Jurisdiction.—The persons comprised in the description "the Judge in Lunacy" may sit as additional judges of the C. D., *Re Platt*, 36 C. D. 410; J. A. 1873, s. 51. But the jurisdiction in Chancery delegated to them by the L. C. (J. A. 1873, s. 51) can only be exercised in aid of the jurisdiction in Lunacy, *Re Barber*, 39 C. D. 187.

Transfer of fund in C. D.—A Judge in lunacy has no power in exercise of his jurisdiction as a Judge in C. D. to order money to be transferred except when sitting in Court, unless the case is within O. 55, r. 2, s.s. 5 (*Re Armfield*, 88 L. T. Jo. 97).

Petition whether in Chancery or Lunacy.—(See J. A. 1873, s. 51, Part V., *post*). The cases are in a very confused state as to whether the petition required by the Rules in Lunacy, 1892, 17, 57, 58, 59, should be entitled in the Chancery Division as well as in lunacy, or in lunacy only. See Pope on Lunacy, 2nd ed. 295; Wood-Renton on Lunacy, p. 990 (note on rule 58).

By the Lunacy Act, 1890, s. 141, the Judge in Lunacy has power in every case in which he can order a conveyance or transfer of land or stock, or make a vesting order (ss. 133—139) to make an order appointing a new trustee or trustees. The object of this section is to avoid applications both in Chancery and Lunacy, where an application in Lunacy is in any event necessary. But it is confined to the *appointment* of trustees, it does not apply to the *discharge* of a trustee. In such a case recourse must be had to the High Court. Wood-Renton on Lunacy, p. 461; *Re Coombs*, 51 L. T. 45; Pope on Lunacy, 2nd ed. p. 297. As the Lords Justices have the jurisdiction of additional Judges of the Chancery Division, by virtue of the letter of the Lord Chancellor, set out J. A., 1873, s. 51, Part V., *post;* orders will whenever possible be made by them without sending the applicant to the C. D. Where a contract was entered into by P., who was afterwards found lunatic, to sell leaseholds, the C. A., on payment of the purchase-money to the *curator bonis*, vested the leaseholds in the purchaser under s. 135 (*Re Pagani* (1892), 1 Ch. 236).

The High Court has jurisdiction under the Trustee Act, 1893, to appoint a new trustee in the place of a sole surviving trustee who is a lunatic not so found, but it cannot in such case make a vesting order, that must be done in lunacy. *Re M.* (1899) 1 Ch. 78. See (n.) "Vesting Order," *infra.*

Proof of Appointment of Trustee by Deed.—It is the practice in petitions in Lunacy and C. D. to require proof of appointment by attesting witness, but if it is shown that endeavours have been made to obtain such proof without success, Court will dispense with (*Re Rice*, 32 C. D. 35).

Consent of Trustees to Act.—See Rules in Lunacy, 1892, r. 92; which is similar to O. 38, r. 19 (a).

Vesting Order.—One of four trustees became lunatic. The Court under Lunacy Act, 1890, ss. 135, 136, vested the estate in the other three

Lunatics.

(*Re Leon* (1892), 1 Ch. 348). See also *Re Gregson* (1893), 3 Ch. 233. In *Re C. M. G.*, (1898) 2 Ch. 324, a person of unsound mind was sole trustee of consols. The Court vested the right to call for a transfer, &c., in A. B. See *Re M.*, (1899) 1 Ch. 78, *supra*.

A Master has power to make a vesting order, *Re Browne* (1894), 3 Ch. 412, 417. But a County Court judge has no power under Lunacy Act, 1890, to make a vesting order as to stock standing in name of lunatic (*Re Noyce* (1892), 1 Q. B. 642).

Lunatic donee of a power to appoint.—See Lunacy Act, 1890, s. 1; and *Re Shortridge*, (1895) 1 Ch. 278.

Voluntary Liquidator Lunatic.—*Removal of.*—The H. C. has jurisdiction to remove, *Re North Molton, &c., Co.*, 54 L. T. 602.

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See O. 16, r. 16, p. 170, Vol. 1.

Married Women's Property Act, 1882.

Sec. 1, *sub-sec.* 2. "A married woman shall be capable of entering into and rendering herself liable in respect of and *to the extent of her separate property* on any contract, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property, and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise." Sub-secs. 3 & 4 are repealed by the M. W. Prop. Act, 1893, *infra*.

"To the extent of her Separate Property."

Effect of Section.—The effect of the section is to allow a married woman to be sued for everything for which a man could be sued, except that her power *of contracting* is limited and the remedy against her is confined to her *free separate estate* (*Whitaker* v. *Kershaw*, 45 C. D. p. 329; and see *Hoare* v. *Niblett* (1891), 1 Q. B. 781; *Softlaw* v. *Welch*, (1899) 2 Q. B. 419).

Before the M. W. P. Act, 1893, p. 352, *infra*, unless at *date of contract* she had separate property she was not bound; and the *onus* was on the plaintiff to show she had (*Palliser* v. *Gurney*, 19 Q. B. D. 521; *Leak* v. *Driffield*, 24 Q. B. D. 98; *Stogdon* v. *Lee* (1891), 1 Q. B. 661; *Pelton* v. *Harrison* (1891), 2 Q. B. 422; *Whitaker* v. *Van der Smissen*, 4 Times Rep. 707; *Bird* v. *Barstow* (1892), 1 Q. B. 94, cited *infra*; *Southern Counties Bank* v. *Farquhar*, 34 Sol. Jo. 182; *The Union Debenture Company* v. *Baker*, 12 Times Rep. 299; but cf. *Brereton* v. *Edwards*, 4 Times Rep. 549; and that such contract had reference to her separate estate, *Harrison* v. *H.*, 13 P. D. p. 184; *Re Ann* (1894), 1 Ch. 549. See now the Married Women's Property Act (1893), s. 1, p. 352, *infra*. And cf. (nn.), Vol. I., p. 179.

The test, when the contract was entered into, *before* 5 *Dec.* 1893, is, was she at the date of the contract possessed of separate estate of such a character that she might *reasonably* be deemed to have contracted on the faith of it (*Leak* v. *Driffield*, 24 Q. B. D. 98; *Southern Counties, &c., Bank* v. *Farquhar*, 34 Sol. Jo. 182; *Neck* v. *Taylor*, 9 Times Rep. 547). If her property is restrained from anticipation, such a presumption does not arise, *Re Harrison*, 13 P. D. 180; *Re Northage*, 7 Times Rep. 465. Nor does it if the separate estate is very small, *Braunstein* v. *Lewis*, 65 L. T. 449; *Leake* v. *Driffield*, 24 Q. B. D. 98; *Everitt* v. *Paxton*, 65 L. T. 383; but see *Bonner* v. *Lyon*, 38 W. R. 541; and *Harting* v. *White*, 37 Sol. Jo. 132. It must be assumed *primâ facie*, that a woman carrying on a trade has separate estate (*Eddowes* v. *Argentine Loan Co.*, 63 L. T. 364 (C. A.)).

Seperate Estate.—As to what is, see *Hulme* v. *Tenant*, White & Tudor L. C. (1897), vol. 1, p. 644.—Alimony received by wife under a decree for judicial separation is not separate estate, chargeable by the wife, *Anderson* v. *Hay*, 7 Times Rep. 113. Damages allotted to a wife as compensation for personal injuries is separate estate, *Beasley* v. *Roney* (1891), 1 Q. B. 509. In *Stogdon* v. *Lee* (1891), 1 Q. B. 661, an annuity was given to trustees for husband and wife for their joint lives, upon trust to pay the same to wife for her "separate use without power of anticipation." Held, that separate use continued only during joint lives, and that arrears of annuity unpaid at husband's death were not separate estate. See next note. As to property to which a married woman is entitled in *reversion*, see *Loibl* v. *Fraser*, 9 Times Rep. 534. If a married woman pays money into Court as the price of getting leave to defend, she cannot, if plaintiff recovers, be heard to say that the money so paid is not available to satisfy judgment (*Bird* v. *Barstow* (1892), 1 Q. B. 94).

Widow.—Property secured to the separate use of a married woman with a restraint on anticipation, ceases on the death of her husband to be separate estate within s. 1, s.s. 4 of the Act of 1882, *Pelton* v. *Harrison* (1891), 2 Q. B. 422. But her creditors' rights are not thereby enlarged, and judgment against her on a contract during coverture must be in the form in *Scott* v. *Morley*, *Softlaw* v. *Welch*, (1899) 2 Q. B. 419; *Re Hewett*, (1895) 1 Q. B. p. 332; *Re Wheeler's Settlement*. 15 Times Rep. 545. See now M. W. P. Act, 1893, s. 1, (c) *infra*, p. 352.

Statutes of Limitations.—The Statutes of Limitation apply by analogy to the obligation of a married woman in respect of her separate estate, *Re Hastings*, 35 C. D. p. 105.

General Power of Appointment, M. W. Prop. Act, 1882. s. 4.—Property appointed by a M. W. under a general testamentary power becomes on her death liable for her debts and liabilities, although *she had no separate estate at date of contract: Re Ann* (1894), 1 Ch. 549; *Re Hughes* (1898), 1 Ch. 529 (C.A.). A married woman with a general power of appointment cannot be required to exercise it in favour of the trustee of her estate in bankruptcy, as it is not separate estate (*Re Armstrong*, 17 Q. B. D. 521).

Marriage on or after 1 *Jan.*, 1883.—All the real and personal property, which belongs to a woman at the time of her marriage, on or after 1 Jan., 1883, or which is acquired by or devolves upon her after, is now her separate estate. M. W. P. Act, 1882, s. 2. Cf. *Re Davenport* (1895), 1 Ch., p. 366.

Marriage before 1 *Jan.*, 1883.—If a woman is married before 1 Jan., 1883, then real and personal property, her *title* to which, whether vested or contingent, and whether in possession, reversion or remainder, *accrued after that date*, belongs to her as separate estate. So where at the commencement of the M. W. P. Act, 1882, a woman married before the Act was *entitled* to property not settled to her separate use, subject to a life estate which fell into possession after the commencement of the Act, it was held not separate estate (*Reid* v. *R.*, 31 C. D. 402; and see further *Re Hobson*, 55 L. J. Ch. 300; *Re Tucker*, 33 W. R. 932; *Re Adames* 33 W. R. 835; *Re Parsons*, 45 C. D. 51; *Beckett* v. *Tasker*, 19 Q. B. D 7; *Pope* v. *Bushell*, 4 Times Rep. 610; *Re Shelton*, 7 Times Rep. 638). A will executed by a married woman before the date of the operation of the Act, governs the disposition of what became her property after the Act (*Re Bowen* (1892), 2 Ch. 291).

Restraint on Anticipation.—(Theobald, 1895, p. 513; Seton, p. 769 White and Tudor, L. C. (1897), p. 709.) The court may dispense with when for her benefit and with her consent (Conv. Act, 1881, s. 39; see Seton, F. 1, 764; *Re Warren*, 52 L. J. Ch. 928; *Re Jordan*, 55 L. J. Ch. 330; *Re C.'s Settlement*, 56 L. J. Ch. 556; *Re Currey*, 56 L. J. Ch.

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389 ; *Re Milner* (1891), 3 Ch. 547 ; *Re Pollard's Sett.*, (1896) 1 Ch. 901 ; *Paget* v. *P.* (1898) 1 Ch. 47, 470 C. A. But great caution must be exercised (*Re Little*, 40 C. D. 418 (C. A.)). The trustees of the settlement should be served, although in very special circumstances service has been dispensed with (cf. *Re Little*, 36 C. D. 701). If necessary, the married woman will be separately examined (*Harris* v. *Harford*, W. N. (88) 190). Restraint on anticipation is equivalent to restraint on alienation, *Re Currey*, 32 C. D. 361 ; *In Re Lavender's Policy*, (1898) 1 I. R. 175, a policy taken out by a married woman was subject to a condition that it was not assignable, and the C. A. held it was subject to restraint. See also *Re Loder*, 35 W. R. 58 ; *Re Grey*, 34 C. D. 712 ; *Re Glanvill*, 31 C. D. 532 ; *Smith* v. *Whitlock*, 34 W. R. 414 ; *Re Bown*, 27 C. D. 411 ; *Re Tippett*, 37 C. D. 446 ; *Re Holmes*, 67 L. T. 335. It revives on second marriage, *Stroud* v. *Edwards*, 77 L. T. 280, 363. She cannot bind her interest in property restrained by admissions, *Bateman* v. *Faber*, (1898) 1 Ch. 144 (C. A.) Invalid restraint, *Re Errington*, W. N. (87) 23. Liability of married woman under s. 12 of M. W. P. Act, 1870, enforced, notwithstanding restraint, *Re Hedgely*, 34 C. D. p. 385; *Re Dixon*, 35 C. D. 4. Judicial separation, effect of restraint on, *Waite* v. *Morland*, 38 C. D. 135 ; effect of protection order upon, *Hill* v. *Cooper*, (1893) 2 Q. B. 85. The Probate Court cannot direct a settlement of property which is subject to this restraint (*Michell* v. *M.*, (1891) P. 208).

As to when the restraint ceases with respect to arrears of income, see (n.) " Corpus and income," *infra*. As to impounding the interest of a married woman in property restrained, by way of indemnity for breach of trust, see Trustee Act, 1893, s. 45, and cf. *Bolton* v. *Curre*, (1895) 1 Ch. 544. As to her right to indemnity from her husband where his debts have been paid out of her separate estate, see *Paget* v. *P.* (1898) 1 Ch. 47, 470 C. A.

Where a land is devised to a married woman absolutely for her separate use, without power of anticipation, she is not a tenant for life within Settled Land Acts, 1882—1890; *Bates* v. *Kesterton*, (1896) 1 Ch. 159.

As to payment of costs out of property restrained from anticipation, see (n.) " Married Women's Property Act, 1893," s. 2, p. 352.

Corpus and Income.—The restraint can be made to apply to *corpus* or to income. If the income has accrued due before the date of the judgment, although it has not been paid over to the married woman, it is free from the restraint, *Hood-Barrs* v. *Heriot* (1896), A. C. 174. If it has not accrued due before the date of the judgment it is bound by the restraint, *Hood-Barrs* v. *Catheart*, No. 1 (1894), 2 Q. B. p. 566 ; *Whiteley* v. *Edwards*, (1896) 2 Q. B. 48. As to widowhood, see (n.) " Widow," p. 349.

Inquiry as to separate estate.—(Seton, F. 1, p. 756 ; F. 4, p. 757 ; F. 7, p. 758). This may be directed, *Re Peace*, 24 C. D. 407 ; as to her separate estate at the time of the contract, *Turnbull* v. *Forman*, 15 Q. B. D. 234 ; *Meager* v. *Pellew*, 14 Q. B. D. 973 ; and at date of judgment, see Seton, F. 4, p. 757 ; *Re Shakespear*, 30 C. D. p. 171 ; *Beckett* v. *Tasker*, 19 Q. B. D. 7 ; *Pelton* v. *Harrison*, (1891) 2 Q. B. 422 ; *Bird* v. *Barstow*, *infra* ; or the defendant may be examined under O. 42, r. 32 (Chitty. F., p. 568) ; and see *Aylesford* v. *G. W. R. Co.*, (1892) 2 Q. B. 626, and now " The Married Women's Property Act, 1893," s. 1, p. 352.

Matrimonial Causes Act, 1857.—*Protection Order under.*—(Seton, 816.) For the purposes of contracting, she is, as regards property coming to her, after date of the order, in the position of a *feme sole*. *Re Hughes*, (1898) 1 Ch. 529 (C.A.) Cf. also *Hill* v. *Cooper*, (1893) 2 Q. B. 85.

Judicial Separation.—From the date of the decree the wife becomes entitled to any property that may come to her, as a *feme sole*, *Dawes* v. *Creyke*, 30 C. D. 502 ; *Waite* v. *Morland*, 38 C. D. 135.

Decree absolute.—When husband and wife take by entireties, a decree absolute for dissolution makes them joint tenants, *Thornley* v. *T.* (1893), 2 Ch. 229. See as to the effect of divorce, judgment of Lindley, L.J., *Watkins* v. *W.* (1896), P., p. 225 ; *Stroud* v. *Edwards*, 77 L. T. 280.

Bankruptcy.—See M. W. Prop. Act, 1882, s. 1, s.s. 5. *Re Francis Handford & Co.*, (1899) 1 Q. B. 566 ; *Re Edwards*, 43 W. R. 509 ; *Re Lynes*, (1893) 2 Q. B. 113 ; *Re Hewett*, (1895) 1 Q. B. 328 ; *Re A Debtor*, (1898) 2 Q. B. 576 ; *Re Wheeler*, 15 Times Rep. 545.

"Or otherwise in all respects as if she were a feme sole."—Two married women presented a petition for appointment of new trustees, and their husbands were made co-petitioners ; the petition was amended by striking out names of husbands (*Re Outwin*, 31 W. R. 374). A married woman may bring an action for trespass committed before the Act, in her own name (*James* v. *Barraud*, 31 W. R. 786 ; *Weldon* v. *Winslow*, 13 Q. B. D. 784 ; *Weldon* v. *De Bathe*, 14 Q. B. D. 339), and for assault and battery committed before Act (*Lowe* v. *Fox*, 15 Q. B. D. 667), and she may sue her husband, on a covenant in a separation deed without a trustee, *Sweet* v. *S.* (1895), 1 Q. B. 12. A husband may sue his wife for money lent by him, and for money paid by him at her request, after marriage, not before (*Butler* v. *B.*, 16 Q. B. D. 374, and see *Pindar* v. *Robinson*, W. N. (85) 147).

Her examination is not necessary under Settled Estates Act, 1877, s. 50, where she was married after 1st Jan. 1883 (*Riddell* v. *Errington*, 26 C. D. 220), nor where she is married before that date, but the property in question is acquired after (*Re Harris*, 28 C. D. 171 ; *Re Batts' S. E.* (1897), 2 Ch. 65). Where she was married before that date, and the property was acquired before that date, she must be examined in order that she may exercise her right to a settlement (*Re Harris supra*, and *Re Arabin's Trusts*, 52 L. T. 728. *Re Ward's S. E.*, W. N. (95) 41, and see (n.) "Under Settled Estate Act," &c., p. 354.

She may be sued alone as a third party in respect of a contract made before 1882 (*Gloucestershire Bank Co.* v. *Phillipps*, 12 Q. B. D. 536). She is liable to indemnify an executor paying residue to her without notice of a debt he is afterwards called upon to pay : *Re Kershaw*, 63 L. T. 204. This section does not abolish the liability of the husband for his wife's wrongful acts, and he and she may be sued for her libel after marriage (*Seroka* v. *Kattenbourg*, 17 Q. B. D. 177). It does not remove the personal incapacity of a married woman to be a next friend or guardian ad litem, *Thynne* v. *St. Maur*, 34 C. D. 465. See as to the policy of the Act, *Re Davenport*, (1895) 1 Ch. 366 ; and (n.) "Effect of Section," p. 348, *supra*.

Infant Married Woman.—See this (n.) O. 16, r. 16, p. 170.

Probate.—The executors of a married woman are now entitled to a general grant of probate, *Re Price*, 12 P. D. 137 ; *Re Atkinson* (1898) 1 Ch. 637 ; (1899) 2 Ch. 1. See Probate Rules, Ap. 1897. As to a grant of limited administration to husband where marriage was before 1882, see *In the Goods of Leman*, (1898) P. 215, and cf. *In the Goods of Elisabeth Davis*, W. N. (99) 61.

Injunction—Undertaking.—A married woman being now, for purposes of suing, to be regarded as a *feme sole*, her undertaking for damages must now be accepted, *Pike* v. *Cave*, 68 L. T. 650.

"And any Damages or Costs," &c.—The Court might order a married woman to pay costs out of *any separate property* she might have at date of order, and not only out of that she was entitled to at date of commencement of proceedings, free from restraint, *Cox* v. *Bennett* (1891) 1 Ch. 617 (C. A.), or might order it to be paid out of part only, and this is a discretion with which C. A. will not interfere, *Neville* v. *Baker*, 4 Times Rep. 674. Cf. *Re*

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Andrews, 30 C. D. 159, *Cox* v. *Bennett*, *supra*, *Re Glanvill*, 31 C. D. 532; Mar. Women's Property Act, 1893, s. 2, *infra*.

Set-off of costs.—Although execution as to costs against a married woman is limited to her separate property, yet there may be a set-off against costs, payable to her personally under O. 65, r. 27 (21), *Pelton* v. *Harrison* (2), (1892) 1 Q. B. 118.

Costs, Security for.—See O. 65, r. 6 (n.) "Married Woman."

Costs of Appeal, Security for.—She may be ordered to give, *Weldhen* v. *Scattergood*, W. N. (87) 69; *Whittaker* v. *Kershaw*, 44 C. D. 296; O. 58, r. 15.

Sec. 12. "*Every woman* whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the *same civil remedies*, and also (subject, as regards her husband, to the proviso hereinafter contained) the *same remedies* and redress *by way of criminal proceedings* for the protection and security of her own separate property, as if such property belonged to her as a *feme sole*; but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort." [The remainder of the section deals with criminal matters.]

Married Women's Property Act, 1893.

By this Act, which passed on 5 Dec. 1893, it is provided as follows:

1. Every contract hereafter entered into by a married woman, otherwise than as agent,

(*a*) shall be deemed to be a contract entered into by her with respect to and to bind her separate property whether she is or is not in fact possessed of or entitled to any separate property at the time when she enters into such contract;

(*b*) shall bind all separate property which she may at that time or thereafter be possessed of or entitled to; and

"**Separate Property.**" — See note "To the extent of her separate property," p. 348, and *Re Hughes*, (1898) 1 Ch. 529, C. A.

(*c*) shall also be enforceable by process of law against all property which she may thereafter while discovert be possessed of or entitled to;

Provided that nothing in this section contained shall render available to satisfy any liability or obligation arising out of such contract any separate property which at that time or thereafter she is restrained from anticipating.

"**Restrained from anticipating.**"—See note "Corpus and income," *supra*, p. 350.

2. In any action or proceeding now or hereafter instituted by a woman or by a next friend on her behalf, the Court before which such action or proceeding is pending shall have jurisdiction by judgment or order from time to time to order payment of the costs of the opposite party out of property which *is subject to a restraint on anticipation*, and may enforce such payment by the appointment of a *receiver* and the *sale* of the property or otherwise as may be just.

"**Action or Proceeding instituted.**"— This does not apply to an order made before Act came into operation; nor does it include motions or appeals by defendant: *Hood-Barrs* v. *Cathcart*, (1894) 3 Ch. 376. It applies only to proceedings which initiate litigation, so there is no jurisdiction to order payment of the plaintiff's costs of an unsuccessful appeal by a married woman defendant out of property of hers restrained, *Hood Barrs* v. *Heriot*, (1897) A. C. 177. It means some action or proceeding in the nature of an action initiated by a married woman, *Ibid.*

It applies to an action commenced before and pending at the date of passing of the Act, *Re Godfrey*, 71 L. T. 568; 72 L. T. 8. The presentation of a petition in an action by a married woman is not a "proceeding instituted" within the section, *Hollington* v. *Dear*, W. N. (95) 35; nor is the lodging of a *caveat* in a probate suit, *Moran* v. *Place*, (1896) P. 214, C. A. But a counter-claim is an action or proceeding within it, *Hood-Barrs* v. *Catheart*, (1895) 1 Q. B. 873.

"**Is pending.**"—The action is "pending" although judgment has been entered, *Muirhead* v. *Day*, 12 Times Rep. 169.

"**From time to time.**"—See *Hood-Barrs* v. *Catheart*, (1895) 1 Q. B. 873.

"**Payment of the Costs.**"—An order dismissing action of married woman "with costs" should make them payable out of her separate estate (*Galmoye* v. *Cowan*, 58 L. J. Ch. 769; *Paget* v. *P.*, (1898) 1 Ch. p. 477 (C. A.) The form should run thus: "That the defendant recover against the plaintiff his costs of this action, such costs to be taxed by the taxing master and to be payable out of her separate property and not otherwise; "with liberty to apply for payment out of any property which is subject to restraint on anticipation." *Davies* v. *Treharris, &c., Co.*, 13 R. 219, and see *Re Godfrey, supra; Hood-Barrs* v. *Catheart*, (1895) 1 Q. B. 873; *Hood-Barrs* v. *Heriot*, (1897) A. C. 177. In *Dowd* v. *D.* (1898) 1 I. R. 244, the Court gave costs of all parties out of a share subject to restraint.

Inquiry as to Separate Estate.—See this (n.) p. 350.

Set-off of Costs.—See this (n.), p. 352.

Receiver to secure Costs.—In *Cummins* v. *Perkins*, (1899) 1 Ch. 16, a receiver was appointed of a share under a will, to secure costs ordered to be paid by a married woman. As to a widow, cf. *Pelton* v. *Harrison*, (1891) 2 Q. B. 422.

"**Provided that.**"—Consider effect of *Softlaw* v. *Welch*, (1899) 2 Q. B. 419.

Petitions for Payment out of Court.—(Seton, p. 783.) The following note as to the practice on petition for payment out, must be read with reference to the altered condition of a married woman's rights. If the marriage has taken place before 1 Jan. 1883, and the fund represents property accrued to wife, or to her husband in her right, before that date, and is standing to the separate account of the married woman and her husband, she and her husband may present a petition or summons, O. 55, r. 2 (1), for payment out (see form D. C. F. 3rd ed. p. 1107; Seton, p. 783).

If it is proposed to pay a fund in court, to the wife with the consent of the husband on her separate receipt, she must, if entitled to an equity to a settlement, be examined, notwithstanding such consent (see *Mawe* v. *Heaviside*, 9 W. R. 649, where it was said that in every case of this kind the court should be satisfied the woman clearly understood her right), Seton, p. 787. And see *Gibbons* v. *Kibbey*, 10 W. R. 55; *contra, Clark* v. *C.*, 14 W. R. 449.

If it is her *separate estate*, her examination and consent in Court are unnecessary, *Re Crump*, 34 Beav. 570; *Riddell* v. *Errington*, 26 C. D. 220; *Re Clarke's Trusts*, 21 C. D. 749, and the application should be by the wife alone. Seton, p. 788.

Order for Payment to Wife.—Receipt of Husband.—On a petition a fund was ordered to be paid to M. H. wife of W. H. M. H. was an executrix. The paymaster general refused to pay without receipt of husband. The court added to the order the words "on her separate receipt," *Re Hawksworth*, W. N. (87) 113; and these words are in such cases commonly inserted in the order to pay, see Seton, p. 785.

Dispensing with Examination.—Where examination would be otherwise required the Court will dispense with it where fund is under £200; or produces less than £10 per annum (D. C. P. 128;

Married Women.

Seton, 788). And in the chambers of some judges, the rule has been to dispense with examination up to £500, but in cases between £200 and £500 or £600 (*Andrewes* v. *Tyrrell*, 29 Sol. Jo. 622), the judge exercises his discretion personally. Where her share is proceeds of real estate sold in partition action, cf. *Topham* v. *Burgoyne*, 49 L. J. Ch. 213; *Wallace* v. *Greenwood*, 16 C. D. 362. A fund in court of £264, proceeds of real estate, was paid to a married woman entitled thereto on her separate receipt without deed acknowledged or separate examination (*Frith* v. *Lewis*, W. N. (81) 145, and see *Guest* v. *Neames*, W. N. (84) 227, *infra*; *Re Jeffreys*, 32 L. J. N. C. 264, where the sum was £314).

Under Settled Estates Act, 1877, *s.* 50.—See (n.) "Or otherwise," &c., p. 351. Although the words of the section are imperative, the Court can dispense with examination of a married woman whose interest is remote and represented by trustees, *Re Tessyman's T.*, 77 L. T. 484.

Affidavit of no Settlement.—(D. C. F. p. 780; Seton, p. 793.) The M. W. P. Act, 1882, s. 19, saves settlements. Therefore, on the above applications, it must still be shown by affidavit of husband and wife (1) that there was no settlement, or (2) that there is a settlement (which must be produced), and that it does not affect the fund, D. C. F. p. 781. See S. C. F. R. 1894, r. 61, Pt. III., *supra* (*Britten* v. *B.*, 9 Bea. 143; *Re Queade's Trust*, 33 W. R. 816; *Re Armstrong*, 21 Q. B. D. 264).

Dispensing with.—Where fund is under £20 both separate examination and affidavit are dispensed with (*Guest* v. *Neames*, W. N. (84) 227). See *Re Batt's Set. E.*, (1897), 2 Ch. 65, *supra*.

For a form of order for payment out of Court of dividends to a married woman, see *Stewart* v. *Fletcher*, 38 C. D. 627.

NON-SUIT.

Non-suit.

O. 41, r. 6 (1875), which provided that a judgment of non-suit should have the same effect as a judgment on the merits for the defendant, is repealed (1883) and is not re-enacted, and O. 72, r. 2, does not keep that repealed rule in force. There is not now any judgment of non-suit, in the old sense that *a Plaintiff could claim as a right to be non-suited*, with the right of bringing a fresh action for the same matter. O. 26, Vol. I., p. 329, does away with that right and leaves the matter to the discretion of the judge. The term non-suit is, however, still used, but in the sense of "judgment for the defendant."

A judge has no right to order non-suit on plaintiffs opening, unless with consent of counsel. *Fletcher* v. *L. & N. W. Ry. Co.* (1892), 1 Q. B. 122; *Bottomley* v. *Furnival*, 27 L. J. N. C. 103. If there is no evidence to go to the jury the judge should non-suit, *Turner* v. *Bowley*, 12 Times Rep. 402; *Pinto* v. *Badman*, 7 Times Rep. 318. For an instance of non-suit in an action for slander, see *Argent* v. *Donigan*, 8 Times Rep. 432.

REPORTS AND AUTHORITIES (CITATION OF).

Citation of Reports and Authorities.

Generally, as to Citation of Weekly Notes and Legal Journals.—The practice as to the citation of reports of cases appearing in the W. N. and legal journals is unsettled. It frequently happens that such reports are the only existing ones on points of practice, and, notwithstanding the cases referred to in the subsequent part of this note, such reports are cited and considered both in the C. A. and in the Courts of first instance, e.g. *Re Harrison*, (1899) 1 Ch. p. 472; *Re John Shorey*, 47 W. R. 188.

Weekly Notes.—The Weekly Notes are not to be cited as an authority in C. A. (*Pooley's Trustee* v. *Whetham*, 33 C. D. at p. 77; *Re Woodin* (1895), 2 Ch. p. 318), but only as guides to discovering what has taken

Citation of Reports, &c.

place in the Court, *Barter* v. *Dubeux*, 7 Q. B. D. p. 414, note (2), and on points of practice.

Solicitors' Journal.—The Solicitors' Journal Reports may be so cited (*Walker* v. *Dodds*, 37 C. D. 188).

Railway Commissioners.—The decisions of Railway Commissioners (*Neville and McNamara*) may not be so cited (31 Sol. Jo. p. 164).

Times Reports.—As the Times reports are reports by barristers who put their names to them, the C. A. will accept them, *per* M.R. in *West Derby, &c., Guardians* v. *Atcham, &c.*, 6 Times Rep. 5.

American Reports.—See The Bernina, 12 P. D. p. 77; 33 Sol. Jo. p. 419.

Irish Reports.—Decisions of Irish Court though entitled to the highest respect are not binding on English judges, *per* Kay, J., *Re Parsons*, 45 C. D. p. 62.

Privy Council.—The decisions of the P. C., although of great weight, are not binding on the High Ct. See *Ranelagh* v. *R.*, 41 W. R. 549, where such a decision was followed.

Text Books.—In *Union Bank* v. *Munster*, 37 C. D. p. 54, a passage in Lord Justice Fry's Spec. Per. was cited, and Kekewich, J., thought that text-books by living authors should not be cited.

SOLICITORS.

1. *Summary Jurisdiction of Court over*, p. 356.
2. *Privileges of*, p. 360.
3. *Lien of and Charging Orders*, p. 361.
4. *Retainer*, p. 368.
5. *Taxation*, p. 371.
6. *General Cases*, p. 378.

[This note contains cases of importance mostly decided since the Judicature Act, 1873, which seem likely to be useful to practitioners. For fuller information see Poley on Solicitors (1897), Cordery on Solicitors, 3rd ed. The Solicitors' Remuneration Act, with notes thereon, is printed at p. 577, and the General Order made in pursuance thereof, at p. 582, *infra*.]

PRINCIPAL STATUTES AND REGULATIONS RELATING TO SOLICITORS.

Solicitors.

The Attornies and Solicitors Act, 1843 (6 & 7 Vict. c. 73); The Attornies and Solicitors Act, 1860 (23 & 24 Vict. c. 127); The Attornies and Solicitors Act, 1870 (33 & 34 Vict. c. 28); Solicitors Act, 1874 (37 & 38 Vict. c. 68); The Legal Practitioners Act, 1875 (38 & 39 Vict. c. 79); The Legal Practitioners Act, 1876 (39 & 40 Vict. c. 66); The Legal Practitioners Act, 1877 (40 & 41 Vict. c. 25); The Solicitors' Remuneration Act, 1881; The Solicitors Act, 1888; The Solicitors Act, 1894 (57 & 58 Vict. c. 9): as to all of which see Chitty's Statutes by Lely (1895), title "Solicitors"; The Solicitors Act, 1899; and see the Judicature Acts, Part V., *post*, namely, Judicature Act, 1873, s. 87; Judicature Act, 1875, s. 14; Judicature Act, 1881, s. 24.

Solicitor or Scrivener.—See *Chubb* v. *Button*, 10 Times Rep. 580.

SUMMARY JURISDICTION OF COURT OVER.

Jurisdiction of Court over

Nature and Extent of the Jurisdiction.—In addition to its statutory jurisdiction, the Supreme Court exercises a summary jurisdiction over the proceedings of solicitors who are its officers. This extends to personal misconduct and neglect of duty, *as a solicitor;* as to which, see *Chapman* v. *C.*, 9 Eq. 276; *Dixon* v. *Wilkinson*, 4 De G. & J. 508; *Ex parte Edwards*, 7 Q. B. D. 155; *British Mutual, &c., Co.* v. *Cobbold*, 19 Eq. 627; *Re Four Solicitors*, 7 Times Rep. 672; Seton, 942; D. C. P. p. 1971. And it seems that the jurisdiction also extends to cases where there has been conduct which is morally disgraceful; although *not involving dishonesty or misconduct in any professional relation. Re Cooper*, 67 L. J. Q.B. 276. And possibly to cases in which there is a disclosure of immoral conduct, cf. *Re Weare*, (1893) 2 Q. B. 439.

Solicitors are responsible to the Court for the proper conduct of litigation entrusted to them, and will be charged with any loss sustained by their clients in consequence of misconduct or misfeazance in the prosecution of it, *Dixon* v. *Wilkinson*, 4 De G. & J. p. 522; *Re Dangar's Trusts*, 41 C. D. 178. Where negligence or other breach of duty is committed by a solicitor in a matter of which the Court has seizin, the Court may, and if it can do full justice, will, summarily order the solicitor, its officer, to make good the loss thereby occasioned. The limit of liability is the measure of the loss flowing from the liability or breach of duty. The Court cannot merely because the officer has been guilty of misconduct mulct him in damages, the damages must flow from the negligence or misconduct, *per* C. A. in *Marsh* v. *Joseph*, (1897) 1 Ch. p. 245.

Solicitors. Jurisdiction of Court over.

Exercise of Punitive and Disciplinary Jurisdiction.—This will be exercised for the purpose not of enforcing legal rights, but for the purpose of enforcing honourable conduct; *Re Freston*, 11 Q. B. D. p. 554; *Re Dudley*, 12 Q. B. D. p. 47, 48: *Re Grey*, (1892), 2 Q. B. p. 443, and by motion or summons in a summary way.

J. A. 1873, *s.* 87, *&c.*—By J. A. 1873, section 87, solicitors, attorneys, and proctors are made officers of the Supreme Court, and the jurisdiction exercised over them by the Superior Courts of Law and Equity is given to the High Court and C. A., and this is saved by Solicitors Act, 1888, ss. 5, 19. A judge of the High Court, if the misconduct of a solicitor is brought to his notice, may direct the attention of the official solicitor to be called to the matter, *Cave* v. *C.*, 28 W. R. 764; see Solicitors Act, 1888, s. 12, and *Re Dudley*, 12 Q. B. D. p. 47. *infra*. And the C. A. has original jurisdiction in a similar case, *Re Whitehead*. 28 C. D. 614.

Where business has not been transacted in any Court of Law or Equity, the jurisdiction to order delivery of a bill (6 & 7 Vict. c. 73, s. 37) is in the High Court of Justice, but the application should be in the C. D., *Re Pollard*, 20 Q. B. D. 656.

Certain powers formerly exercised over solicitors by the M. R. jointly with other judges are now to be exercised by the M. R. with the concurrence of the L. C., or L. C. J., or one of them, J. A. 1881, s. 24, *supra;* Solicitors Act, 1888, ss. 5, 19. But where a solicitor has neglected to renew his certificate, the Registrar of Solicitors has power to grant or refuse an application for a fresh certificate, subject to an appeal to the M. R., see the Sol. Act. 1888, s. 16, substituted for the 23rd section of the Act of 1860, which is repealed by the Sol. Act. 1888.

Where a person acts as a solicitor, although he is not one, he renders himself amenable to the jurisdiction (*Re Hulm and Lewis* (1892), 2 Q. B. 261).

Undertaking by.—So as a general rule an undertaking which binds the solicitor personally, makes him liable to this summary jurisdiction. Poley on Solicitors, (1897) p. 89. Where a solicitor gave an undertaking for his firm to pay costs, the undertaking was enforced by motion against the firm (*Re Woodin and Wray*, 30 W. R. 422, and although not given in a cause, see *Re F. C.*, W. N. (88) 77). Where a solicitor guarantees his client's debt, the Court will order payment in a summary way (*Re Pass*, 35 W. R. 410). An undertaking to repay costs if appeal successful may be enforced, see *Swyny* v. *Harland* (1894), 1 Q. B. 707, and such an undertaking should always be asked for on an application to stay execution. *Hood-Barrs* v. *Crossman*, (1897) A. C. p. 176. It will not include interest on such costs. *Edge* v. *Gallon*, W. N. (99) 137. In *Re Coolgardie, &c., Co.*, W. N. (99) 128, an undertaking was given by the solicitor of the company that certain documents should be stamped. The solicitor afterwards applied *ex parte* to be relieved from his undertaking. The application stood over for the Inland Revenue to be served with notice.

Attachment of Solicitor.—See O. 52, r. 4: O. 44, r. 2 (nn.).

Disobedience to an order of Court made against him, *as an officer of the court*, is a contempt, and an attachment granted to enforce compliance with the order is a power of a punitive and disciplinary character (*Re Freston*, *Re Dudley*, *infra*, *Re Grey*, *supra*), and therefore *no privilege from arrest* can be claimed against attachment. So where a solicitor had been ordered in *his capacity of solicitor* to give up documents, &c., and had not done so, he was attached on his return to his office from a police court which he had been attending as an advocate (*Re Freston*, 11 Q. B. D. 545; *Re Wray*, 36 C. D. 138). Where money is found due from a solicitor, *in that character*, and he is ordered to pay it, and makes default, he may be attached, *Re Dudley*, 12 Q. B. D. 44; *Re Farman*, 14 Times Rep. 20; and so where he is ordered to pay taxed costs, *Godfrey* v. *George*, (1896) 1 Q. B. 49; or the costs of taxation, *Re A Solicitor*, (1895) 2 Ch. 66. And where after being ordered to pay a sum into Court a solicitor was adjudicated bankrupt on his own petition, a writ of attachment was issued, *Re Edge*, 63 L. T. 762; *Iles*

Solicitors. Jurisdiction of Court over.

v. *Tilsley*, 93 L. T. Jo. 83. In a case before Pearson, J., reported 28 Sol. Jo. 457, a solicitor was ordered to be attached for not giving up bonds belonging to a trust estate which he had received *as solicitor* to the trustees. In *Re Strong*, 32 C. D. 342, a solicitor was struck off the rolls, and ordered to account and pay, and on default he was attached; and so in *Re Wray*, 36 C. D. 138, where a receiving order had been made against a solicitor who has been ordered to pay money in his character of a solicitor.

If he makes default in payment of a sum of money, and then ceases to be a solicitor, he is still liable to attachment. *Re Strong*, 32 C. D. 342. This disciplinary jurisdiction may be put in motion not only by the person to whom money is ordered to be paid, but by any other person. *Godfrey* v. *George* (1896), 1 Q. B. p. 53, and an action will lie for the money though attachment is refused. *Ibid.*

Delivery of Deeds.—As to ordering him to deliver up deeds, it must be shown that the relation of client and solicitor exists, *Ex p. Cobeldick*, 12 Q. B. D. 149.

Injunction—Solicitor not restrained from acting for opposite party.—Where a solicitor has acted for one party in an action, he will not be restrained from acting for opposite party, but he must undertake not to communicate secrets (*Little* v. *Kingswood Collieries Co.*, 20 C. D. 733; and see as to withdrawal from joint retainer, *Re Flint*, W. N. (85) 163).

Uncertificated Solicitor. See (n.) "Certificate," p. 379. See Attorney and Solicitors Act (1874), s. 12. Neither the solicitor himself nor his client can recover costs incurred during period he is without a certificate. *Fowler* v. *Monmouthshire R. & C. Co.*, 4 Q. B. D. 334: *Kent* v. *Ward*, 70 L. T. 612. So in taxation, all items relating to business done while solicitor was without certificate, must be disallowed. *Re Sweeting*, (1898) 1 Ch. 268.

Unqualified person acting as solicitor or partner.—Unqualified person so acting is liable to attachment, *Re Hunt*, 8 Q. B. D. 187; *Re Hulm & Lewis*, (1892) 2 Q. B. 261; also to committal, 6 & 7 Vict. c. 73, ss. 2 & 32; 23 & 24 Vict. c. 127, s. 26; *Osborne* v. *Milman*, 18 Q. B. D. 471; *Re Hall*, 69 L. T. 385; *Law Society* v. *Shaw*, 9 Q. B. D. 1; *Re Roberts*, 82 L. T. Jo. 228; *Re Braid*, 43 Sol. Jo. 192; and a solicitor allowing an unqualified person to use his name may be struck off (*Re Kelly* (1895), 1 Q. B. 180; see also *Marsh* v. *Joseph*, (1897) 1 Ch. 213). Settling an affidavit is not "acting as a solicitor" within 6 & 7 Vict. c. 73, s. 2, *Re Louis* (1891), 1 Q. B. 649. In *Hicks and Abbott's Case*, 28 Sol. Jo. 90, two solicitors were struck off the rolls for allowing two unqualified persons to act in their names and these two persons were imprisoned, see *Re Simmons*, 15 Q. B. D. 348. A solicitor may be struck off for permitting such a person to act as his partner, *Re a Solicitor*, 12 Times Rep. 341. And see also similar cases under Sol. Act, 1843, s. 32; *Re a Solicitor*, 32 Sol. Jo. 544; and 88 L. T. Jo. 294; *Re Sykes*, 34 Sol. Jo. 285. Person so committed is a "criminal prisoner," *Osborne* v. *Milman*, 18 Q. B. D. 471; *Re Grayston*, 4 Times Rep. 773. And such person, *not being a solicitor*, cannot appeal, but a solicitor being punished by striking off the rolls can appeal, *Re Eede*, 25 Q. B. D. 228. Acting without certificate, or properly stamped certificate, 30 Sol. Jo. 374.

The judge of a County Court has no jurisdiction to commit for contempt under Solicitors Act, 1860, s. 26, *Reg.* v. *Stonor* (1893), 2 Q. B. 195.

Persons employing an unqualified person as a solicitor cannot recover costs. *Irving* v. *Sanger*, 59 L. T. 894; *Fowler* v. *Monmouthshire Canal Co.*, 4 Q. B. D. 334; and cf. *Hunt* v. *Fineburg*, 22 Q. B. D. 259, cited O. 7, r. 3. But where a qualified person carried on business in the name of O., an unqualified person, and Co., it was held costs might be recovered, *Williams* v. *Vere*, 10 Times Rep. 477.

"*Pretending to be a solicitor.*"—See 37 & 38 Vict. c. 68, s. 12; and *Re Lawrence*, 32 Sol. Jo. 45; *Re St. Leger Dutch*, 32 Sol. Jo. 78; *Re Morris*, 85 L. T. Jo. 84; *Incorp. Law Society* v. *Martin*, 35 Sol. Jo. 88; *Re W. Cooper*, 35 Sol. Jo. 613; 92 L. T. Jo. 894; *Re Hulm*, (1892) 2 Q. B. 261.

"*Acting as proctors or solicitors.*"—Under 23 & 24 Vict. c. 127, s. 26, see *Law Society* v. *Waterlow*, 8 App. Cas. 407.

Striking off the Rolls, suspending, &c.—See O. 52, rr. 2—5; 6 & 7 Vict. c. 73, ss. 24, 28, 32; 23 & 24 Vict. c. 127, s. 24; 37 & 38 Vict. c. 68, s. 7; Solicitors Act, 1888, *infra*: Solicitors Act, 1899, s. 2.

The Court under its punitive and disciplinary jurisdiction may strike a solicitor off the rolls, or suspend him for professional misconduct, as to which see *Re Four Solicitors*, 7 Times Rep. 672. See also (n.) "Unqualified person," &c., p. 358.

Discretion of Court.—Striking off is a matter for the discretion of the Court even in felony and after suspension. *Re a Solicitor*, 61 L. T. 842; 63 L. T. 350. The offence need not be of a pecuniary nature, or connected with his profession, so on a conviction for murder, the convict was struck off. *Re Cooper*, 67 L. J. Q. B. 276; *Re Weare*, *supra*.

Order of Colonial Court, Striking off Solicitor.—The English Court will not merely on proof of such an order strike a solicitor off the roll in England. *Ex p. Incorporated L. Society*, (1898) 1 Q. B. 331.

Postponement of Punishment.—A solicitor having been convicted and imprisoned applied that no proceedings should be taken to strike him off the rolls until he should be liberated, and it was so ordered, *Re a Solicitor*, 7 Times Rep. 421.

Restoration to Roll.—There was no jurisdiction to restore a solicitor to the rolls, who had been struck off under Sol. Act, 1843, s. 32. *Re Lamb*, 23 Q. B. D. 477; *Re Brandreth*, 39 W. R. 687. See. now. Solicitors Act, 1899.

Suspension.—See *Re* Solicitors Act, 1843, 47 W. R. 575, and Solicitors Act, 1899.

Commissioner, striking off.—See *Ward* v. *Gamgee*, 40 W. R. 39; *Shrapnel* v. *Gamgee*, 8 Times Rep. 9.

Application to strike off.—O. 52, r. 4.

The Solicitors Act, 1888.—By this Act the roll of Solicitors is given into the custody of the Incorporated Law Society; all affidavits, &c., formerly filed at Petty Bag Office are to be filed with them, and the powers and duties of the clerk of the Petty Bag are transferred to that society, &c. A committee of the council of the society is to be appointed by the M. R. for the purpose of hearing any application to strike a solicitor off the roll, or on an application to require a solicitor to answer affidavits. The case is to be heard according to rules made under the Act, and the findings of the committee are embodied in a report to the High Court, ss. 12, 15.

Rules under the Act.—See 33 Sol. Jo. 227, 331, and additional rules, 42 Sol. Jo. 428; Poley on Solicitors (1897), p. 609. See R. S. C., O. 52, r. 24, as to costs under s. 13.

Jurisdiction of High Court.—The jurisdiction of the H. C. is saved by s. 19. See *Re Weare* (1893), 2 Q. B. 439, and although the greatest weight will be attached to the findings of the Committee, it is competent to the Court to go into the facts for itself and to decide whether or not it agrees with the report. *Re W. R. Davies*, 14 Times Rep. 332.

Right of application to Committee under Act.—The right of applying to the Committee of the Incorporated Law Society under the Solicitors Act, 1888, is not restricted to clients (*Re a Solicitor*, 25 Q. B. D.

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17 ; *Re Sankey*, 59 L. J. Q. B. 238). Answers to admissions made by a solicitor on his examination in bankruptcy may be made the ground of an application against him (*Ibid.*).

The Committee have a discretion to refuse to proceed in any matter which is laid before them, and the Court will not, necessarily, interfere with such discretion by a mandamus, *Reg.* v. *In. L. Socy.* (1895), 2 Q. B. 456 : (1896) 1 Q. B. 337.

Evidence.—All the evidence both for and against must be laid before the committee before the Court will adjudicate on the case, *Re a Solicitor*, 36 Sol. Jo. 94. It may in certain cases be by affidavit, see add. rules, 42 Sol. Jo. 428.

If in the opinion of the Committee an affidavit in support of an application discloses no *primâ facie* case of misconduct, they are not bound to hear the applicant or his evidence, *Reg.* v. *I. L. Society* (1896), 1 Q. B. 327.

Costs of Application under s. 13.—An application for the costs of an inquiry, the report on which exonerates the solicitor, should be made to a judge in chambers within three calendar months of date of report, O. 52, r. 24, cf. *Re Davidson* (1899), 2 Q. B. 103.

Application privileged.—The application being a judicial proceeding no action for libel in respect of a letter of complaint laid before the society will lie (*Lilley* v. *Roney*, 61 L. J. Q. B. 727).

Report of Committee.—As to the effect to be given to the Report under ss. 12, 13, see *Re Eede*, 34 Sol. Jo. 547, and 42 Sol. Jo. 689. If the charge made is withdrawn without objection made by the solicitor, the inquiry instituted by the society need not be followed by a report, *Ex p. Whitfield*, 67 L. T. 856.

Not binding on Court.—Although the Court will pay great deference to the findings of the Committee, it is not bound by such findings : *Re Crowdey*, 11 Times Rep. 406, and in *Re Davis*, 14 Times Rep. 161, a solicitor acquitted by the Committee was convicted by the Court.

Appeal.—An appeal lies to C. A. notwithstanding J. A. 1873, s. 47, *Re Hardwick*, 12 Q. B. D. 148 ; *Re Hopper*, 34 Sol. Jo. 568 ; and an appeal lies *but by the solicitor only*, in cases where he is struck off under 6 & 7 Vict. c. 73, for allowing an unqualified person to act, *Re Eede*, 25 Q. B. D. 228. As to rehearing, *Re J. Bassitt*, 29 Sol. Jo. 696 ; as to increasing sentence, *Re a Solicitor*, 5 Times Rep. 486.

PRIVILEGES OF.

Privileges of.

Audience.—*Right of in High Court.*—The right of audience given to solicitors by Banky. Act, 1883, s. 151, is strictly limited to the High Court, and does not include the C. A., *Re Elderton*, 31 Sol. Jo. 235. There is no such right on the trial of municipal election petitions : *Reg.* v. *Mansel Jones*, 23 Q. B. D. 29.

County Court.—Cty. Ct. Act, 1888, s. 72. A solicitor's clerk (admitted) has no right to be heard in a County Court for a client of his principal, but may be, by leave of judge. *Reg.* v. *Snagge* (1894), 2 Q. B. 440 ; *Cottrell* v. *G. W. R. Co.*, 39 Sol. Jo. 116.

Libel.—Solicitors come within the principle of *Munster* v. *Lamb*, 11 Q. B. D. 588, and can claim privilege for anything said or written by them in their character of advocates in the course of any judicial proceeding ; *e.g.*, for allegations contained in written objections to taxation (*Pedley* v. *Morris*, 40 W. R. 42). Also in respect of letters dictated to a clerk and copied into press copy book *Baker* v. *Carrick* (1894), 1 Q. B. 838 ; *Boæsius* v. *Goblet*, (1894) 1 Q. B. 842.

Privilege of suing or being sued in his own Court.—Solicitors are now solicitors of the Supreme Court, Jud. Act, 1873, s. 87, *post*, Part V., and

Solicitors. Privileges of.

the privilege if it exists is now of no value. Cf. Poley, on Solicitors, p. 58. A solicitor of the Mayor's Court is liable to be sued in the Supreme Court, for he is a member of both Courts, *Day* v. *Ward*, 17 Q. B. D. 703.

Right to Sue in High Court.—Summons by defendant to remit action to County Court. Plaintiff, a solicitor, claimed privilege to sue in Superior Court. Field, J., held it did not now exist, *Sharp* v. *Horrocks*, 32 Sol. Jo. 93 ; *Blair* v. *Eisler*, 21 Q. B. D. 185.

Discovery.—As to discovery cf. (n.) "Legal professional privilege," O. 31, r. 1, Vol. I., p. 379. A solicitor called as a witness on inquiry as to property of a married woman, declined to produce her settlement or give the names of the trustees ; held he must do both (*Bursill* v. *Tanner*, 16 Q. B. D. 1).

Arrest.—A solicitor is privileged from arrest on his way to or from Court or judge's chambers, but not from arrest for disobedience to an order of a Court of a disciplinary character, *Re Freston*, 11 Q. B. D. 545 ; *Re Dudley*, 12 Q. B. D. 44 ; Seton, 408.

LIEN OF SOLICITOR & CHARGING ORDERS.

Lien of.

Generally.—There are two kinds of lien (1) the retaining lien ; (2) the charging lien, as to which latter see p. 363 *infra*.

1. The Retaining Lien on Documents.—A solicitor is entitled by the general law, *Brunton* v. *Electrical Corp.* (1892), 1 Ch. 434, to retain documents of his client rightfully in his possession until the general costs due to him as solicitor to such client are paid, see (n.) "Extent of, &c.," *infra*, and cases there cited. If there be no fund and no cause, still the client cannot get back his papers without paying what is due for *costs* in *any business* done for him by the solicitor, *in that character*. See *Worrall* v. *Johnson*, 2 Jac. & W. 214, 218 ; *Re Taylor* (1891), 1 Ch. 590 ; and (n.) "Extent of," *infra*. When costs are paid, lien is at an end, and solicitor must not then retain papers, because some third person claims them (*Re Emma Silver Mining Co.*, 24 W. R. 54).

Absconding Solicitor, Lien of.—See *Molloy* v. *Kilby*, 25 Sol. Jo. 317.

Destruction of Lien.—This lien is not barred by the Statute of Limitation, nor destroyed by involuntary loss of possession, *Re Carter*, 34 W. R. 57.

Extent of.—It extends to *all taxable* costs, charges and expenses incurred by him *as solicitor* for his client. The sums in respect of which the lien is claimed must be such as the Taxing-Master has a right to consider, and if necessary moderate. It extends only to debts due to him *as solicitor*, not to general debts, or to any advances which do not come within this category, *Re Taylor* (1891), 1 Ch. 590 ; *Re Galland*, 31 C. D. 296 ; *Re Anglo-Maltese Co.*, 33 W. R. 652 ; *Re Capital Fire Co.*, 24 C. D. 408 ; *Bissill* v. *Bradford Tramways*, 9 Times Rep. 337 ; *Re Hanbury, &c.*, 13 Times Rep. 91. It is subject to all rights, legal and equitable, affecting the documents in the hands of the person from whom he received them, *Pelly* v. *Wathen*, 1 D. M. & G. p. 27, cited *Re Llewellin* (1891), 3 Ch. 148. If the solicitor is a trustee for third parties of the documents or money no lien attaches thereto (*Brandao* v. *Barnett*, 12 C. & F. 787 ; *Stumore* v. *Campbell* (1892), 1 Q. B. p. 316).

The general lien of a solicitor on documents is merely a right to keep back from *his client* the deeds and papers which he has received and holds *as solicitor* until the bill of costs is satisfied. It is a right derived entirely through the *client* and, therefore, *cannot go beyond the right of the client himself*. If the client's right to the document is absolute, so is that of the solicitor ; if in the hands of the client they are subject to rights of third parties, such rights follow them into the hands of the solicitor, *Pelly* v. *Watkin*, 1 De G. M. & G. p. 23 ; *West of England*

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Bank v. *Bateñelor*, 30 W. R. 364; *Re Capital Fire, &c. Co.*, 24 C. D. 408; *Re Anglo-Maltese, &c. Co.*, 33 W. R. 652; *Re Llewellin*, (1891) 3 Ch. 145; *Re Lawrance*, (1894) 1 Ch. 556; *Re Hawkes*, (1898) 2 Ch. 1.

Mortgages, &c.—A mortgagor sold the equity and filed his petition; C. who had acted as solicitor for the mortgagor and mortgagee, and was also solicitor for the trustee, claimed to retain costs due from the mortgagor out of the purchase-money, and a lien on deeds, which he held for mortgagor and mortgagee, and it was held he might do so and that he had a lien (*Re Messenger*, 3 C. D. 317). Where the same solicitor acts for mortgagor and mortgagee, he cannot claim a lien on the title-deeds against the mortgagee, for costs due to him from mortgagor (*Re Snell*, 6 C. D. 105, followed in *Re Mason & Taylor*, 10 C. D. 729, explained in *Macfarlane* v. *Lister*, 37 C. D. 88; distinguished in *Brunton* v. *Electrical, &c., Corp.*, (1892) 1 Ch. 434; and see *Ex p. Fuller*, 16 C. D. 617; *Ex p. Quinn*, 32 W. R. 296; *Re Walker*, 68 L. T. 517, cited *infra* (n.), "Solicitor trustee," p. 377. Where a solicitor is mortgagee he has no lien on the mortgage deed against prior or subsequent mortgagees, for the deed is his own (*Sheffield* v. *Eden*, 10 C. D. 291). The equitable right of a mortgagor to have back his deeds from the mortgagee on payment of principal, &c., prevails against the solicitor's lien, claimed in right of the mortgagee, *Re Llewellin*, (1891) 3 Ch. 145.

Production and delivery up of documents.—The principle enunciated by Lord Redesdale in *Furlong* v. *Howard*, 2 Sch. & Lef. 115, that "though a solicitor may have a lien on a deed for his costs, yet if his client is bound to produce it for the benefit of a third person, so also must the solicitor" has never been modified, see judgment of Rigby, L.J., *In re Hawkes*, (1898) 2 Ch. p. 15, in which case the principles and extent of this lien were fully considered by the C. A.

Where the retention of papers would embarrass the client in pending actions the court may order *delivery up* of such papers before taxation, on payment into Court being made or security given. Possibly the jurisdiction is extended by O. 50, r. 8. *Re Galland*, 31 C. D. 296 (C. A.), in which case the solicitor had been discharged, *Re Hanbury*, 13 Times Rep. 91, and of *Re Walker*, *infra*. In administrative or other representative actions, in which the rights of litigant other than his client are concerned, a solicitor who has not been discharged, or who has discharged himself, may be summarily ordered to produce, without prejudice to his lien, all papers received by him in the action, or before the action, *Re Hawkes*, (1898) 2 Ch. 1 *passim*: *Ley* v. *Barlow*, 1 Ex. 800. If the solicitor has been discharged by his client, then, in such action, as the discharge cannot affect the right to production of *any third party*, he is liable to be ordered *summarily* to produce papers received by him for the purposes of the action (*Re Hawkes*, pp. 25, 26), but, perhaps, not those on which he has a lien prior to the action (*Ibid.* pp. 20, 21), although even these may be ordered to be produced at the trial, on a subpœna, *Ibid*, pp. 11, 20, 21, 25, 26; *Ross* v. *Laughton*, 1 V. & B. 349; *Belaney* v. *Ffrench*, L. R. 8 Ch. 918; *Re Boughton*, 23 C. D. 169; *Re Capital Fire &c. Co.*, 24 C. D. 408; *Boden* v. *Hensby*, (1892) 1 Ch. 101. But if there are no third parties interested it seems a discharged solicitor will not be required to hand over documents to the new solicitor until the lien is discharged, *Re Walker*, 37 Sol. Jo. 242.

Where there is no litigation in which the solicitor acts, or has acted, for one of the parties—where, in fact, he is a mere stranger—he may be summoned as a witness on a subpœna *duces tecum*, and ordered to produce, at the trial, documents on which he claims a lien, *Re Hawkes*, pp. 15, 16, 25, *Brassington* v. *B.*, 1 S. & S. 455; *Hope* v. *Liddell*, 7 D. M. and G. 331.

A solicitor who has acted in the administration of an estate is entitled

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to retain the papers relating thereto, so far as they have come into his hands for the purpose of carrying on the action, and he cannot be compelled to give up the papers to an administrator *de bonis non*, until the costs incurred on behalf of preceding administrators have been paid, *Re Watson*, 32 W. R. 477.

A motion for delivery up by a solicitor of papers is rightly entitled in the matter of the action or matter in which the solicitor was employed; *Re Marie Rose, &c., Co.*, W. N. (96) 76.

A clerk to a local board will not be ordered to produce documents on which he has a lien, unless amount of lien is deposited in Court (*Newington Local Board* v. *Eldridge*, 12 C. D. 349: *Re Galland*, 31 C. D. 296). In *Re Toleman*, 13 C. D. 885, the solicitor was ordered, notwithstanding his lien, to produce to the trustee of a bankrupt documents belonging to the bankrupt. In *Fowler* v. *F.*, 29 W. R. 800, a solicitor was ordered to produce a marriage settlement on which he claimed a lien; and see *Re Chatterton*, 26 Sol. Jo. 59; *Re Hutchinson*, 34 W. R. 637. See Seton, pp. 920, 921.

Inspection.—Lien does not prevent (*Lockett* v. *Cary*, 10 Jur. N. S. 144), and see *Lewis* v. *Powell* (1897), 1 Ch. p. 681. In *Re Biggs*, 41 Sol. Jo. 277, Kekewich, J., refused a motion for inspection on the ground that the purpose of a lien would be destroyed if the *client* was to be at liberty to inspect documents and take copies or carry their contents away in his memory. The right of taking copies follows from the right of inspection, *Pratt* v. *P.*, 51 L. J. Ch. 838.

Bankruptcy.—There is no lien on debtors' books of account, Bankruptcy Rules, rule 349. But this rule is construed strictly and does not extend to vouchers, &c., &c., *Re Winslow*, 16 Q. B. D. 696, and see *Re West*, 21 C. D. 868. As to production of all documents see *Re Toleman*, *supra*, 13 C. D. 885. The solicitors of a trustee in bankruptcy, being changed, have a lien upon documents upon which they have expended their labour and money (*Re Austin*, 4 C. D. 129. See as to lien on moneys, (n.) "Bankruptcy," p. 364, *infra*.

Lien on Change of Solicitor.—See (n.) "Lien on change of," O. 7, r. 3, Vol. I., p. 44.

2. The Charging Lien.—This is a right to have the fruit of an action charged in favour of the solicitor, with his costs in that particular action. It exists by the common law, enlarged by statute 23 & 24 Vict. c. 127, s. 28, and as enlarged, the right extends to real estate. It can be protected by stop order or injunction and enforced by action, or by the charging order under the statute, as to which see p. 365, *infra*; cf. Seton, pp. 925, 930; *Poley* on Solicitors, p. 353.

Award.—The common law lien attaches to an award, but a charging order under the statute, being limited to proceedings in a Court of Justice, cannot be made in respect of the costs of an arbitration, *Macfarlane* v. *Lister*, 37 C. D. p. 95.

Solicitor Trustee.—Where a solicitor undertook to pay certain instalments to creditors out of funds provided by the debtor for that purpose, he was held to have made himself a trustee for them, and so not entitled to lien for costs on such moneys (*Re Clark*, 4 C. D. 515; see also *Leete* v. *Leete*, 27 W. R. 921). In *Re Walker*, 68 L. T. 517, the estate of a solicitor who had paid the premiums on certain policies assigned to him as trustee for a mortgagee and who had acted for mortgagor and mortgagee, was allowed a lien on the proceeds of the policies for the premiums, and also for the professional charges, but subject, as to the latter, to the mortgage.

Receiver.—The appointment of a receiver in a debenture-holder's action does not interfere with the lien of the solicitor of the company, although the company were not to be at liberty to create a charge prior

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to such debentures, *Brunton* v. *Electrical, &c., Corp.* (1892), 1 Ch. 435. See *Pelsall, &c., Co.* v. *L. & N. W. Ry. Co.*, 8 Times Rep. 629.

Bankruptcy.—See *Re Spackman*, 24 Q. B. D. 728, explaining *Re Sinclair*, 15 Q. B. D. 616. In *Re Pollit*, (1893) 1 Q. B. 455, money was handed to a solicitor by a debtor for future costs, the debtor then executed a deed of assignment upon which he was adjudged bankrupt The solicitor claimed to retain this money, but the C. A. held he was not entitled to do so. See *Re Charlwood*, (1894) 1 Q. B. 643; *Re Beyts and Craig*, 42 W. R. 432; *Re Simonson*, (1894) 1 Q. B. 433; *Re Whitlock*, 70 L. T. 34. As to lien on documents, see (n.) "Bankruptcy," *supra*, p. 363.

Between agent in town and country solicitor.—The London agent has a general lien on particular moneys received as against country solicitor, but not as against client (*Lawrence* v. *Fletcher*, 12 C. D. 858; *Re Maud*, 34 Sol. Jo. 709; and see *Ward* v. *Lawson*, 43 C. D. 353).

B. as London agent of C. received a sum of 43*l.* recovered in an action in which E., client of C., was plaintiff; he claimed to retain the sum against general agency charges due to him from C.; although the plaintiff E. owed him (B.) nothing, the master reported the general practice to be as follows:—"I find the general practice between country solicitors and their town agents to be that, when the writ of execution is issued by the town agent, the town agent receives the proceeds of such execution on behalf of the country solicitor; that the town agent is not entitled to retain any debt or any part of a debt so recovered: that he has a lien upon, and is entitled to retain, the costs so recovered for any costs that may be owing to him by the country solicitor on his general agency account; that the London agent is entitled to the same lien as, and no greater lien than, the country solicitor, and, therefore, if the country solicitor could not retain the debt recovered as aforesaid against his client, so neither can the London agent retain it;" and he also found there was no practice as to accounts between B. and C. The C. A. held that B. must give the money up (*Ex p. Edwards*, 7 Q. B. D. 155; see also *Macfarlane* v. *Lister*, 37 C. D. 88; *Re Maud*, 34 Sol. Jo. 709).

Set-off.—See O. 65, r. 14.

Waiver of.—Each case of waiver depends upon its particular circumstances, but if a solicitor takes security from his client the *primâ facie* inference is that he waives his lien, *Re Taylor*, (1891) 1 Ch. 590; *Groom* v. *Cheesewright*, (1895) 1 Ch. 730; *Re Douglas-Norman*, (1898) 1 Ch. 199. And although he may have no intention of waiving his lien the result will be the same, *Bissill* v. *Bradford, &c., Co.*, 9 Times Rep. 337; but see *Re Lumley*, 37 Sol. Jo. 83. If the solicitor does not intend to waive his lien, *semble*, he should on taking security intimate to his client his intention to retain his lien, *Re Douglas-Norman*, *supra*, (1898) 1 Ch. 202. If a security be taken, waiving it will not restore the lien, *Bissill* v. *Bradford, &c., supra*.

Waiver by giving Time for Payment.—See *Cowell* v. *Simpson*, 16 Ves. 275.

Compromise or Collusion affecting Lien.—Parties to an action may compromise without intervention of solicitor, but there must be no intention to cheat the solicitor of his charges, and the Court will exercise its equitable interference to enable a solicitor to proceed in the action for his costs, though no notice of his lien has been given, in cases where it is made out that there has been collusion to cheat the solicitor; but unless there has been notice or collusion, the solicitor, if the client has compromised, can only look to his client, and there is no difference in this respect between the Ad. Div. and any other Div. of the H. C., *The Hope*, 8 P. D. 144; *Moxon* v. *Sheppard*, 24 Q. B. D. 627; *The Paris*, (1896) P. 77. As to "notice," see *Cole* v. *Eley*, (1894) 2 Q. B. 180. 350, and *The Paris*, *supra*. In *Sanderson* v. *Consolidated, &c.*, 6 Times Rep. 404, the defendant compromised the action with plaintiff personally, and

then applied to stay proceedings, this was opposed in name of plaintiff on ground that compromise was made in fraud of plaintiff's solicitor; Div. Ct. discharged an order to stay, and gave defendant leave to plead the compromise or other plea if so advised, but plaintiff not to sign judgment for costs on such further plea; and see *Price* v. *Crouch*, 60 L. J. Q. B. 770, followed, *Re Margetson*, (1897) 2 Ch. 314; *Wiedemann* v. *Walpole*, 7 Times Rep. 629; *Briscoe* v. *B.*, (1892) 3 Ch. 543.

Changing Solicitor.—As to effect of an order to change on lien, see (n.) O. 7, r. 3, Vol. I., p. 44. See also *Price* v. *Crouch*, *supra*.

Threat to change Solicitors and to Compromise.—Plaintiffs entitled to a third share of certain property recovered for them by their solicitors, threatened to change them and to compromise. Fry, J., on petition declared the solicitors entitled to a charge on the one-third, and restrained the plaintiffs from receiving any money in the action, or under any compromise, without notice to the petitioners. (*Lloyd* v. *Jones*, 27 W. R. 655. Cf. *Pilcher* v. *Arden*, 7 C. D. 318). And it makes no difference whether a sum is awarded on a reference, or recovered by judgment, in either case the lien is upheld (*Ormerod* v. *Tate*, 1 East, 464; 6 Rev. Rep. 327; *Ross* v. *Buxton*, 42 C. D. 190, *infra; Price* v. *Crouch*, *supra*).

Charging Order on Property "recovered or preserved" (Solicitors Act, 1860, s. 28).—This lien is confined to the costs incurred in respect of the particular property recovered or preserved, it is not a general lien for all costs, *Bozon* v. *Bolland*, 4 My. & C. 354; *Mackenzie* v. *Macintosh*, 64 L. T. 706. In *Waterland* v. *Searle*, W. N. (97) 163, it was held to include the costs of an application to the Court below, and of the C. A. It refers *only* to property recovered or preserved in a *civil Court of Justice*, *Re Humphreys*, (1898) 1 Q. B. p. 525 (C. A.): *Macfarlane* v. *Lister*, 37 C. D. 88. The jurisdiction is entirely discretionary, *Re Humphreys*, p. 526, and *Greer* v. *Young*, 24 C. D. p. 587, and see (n.) "Bankruptcy," p. 368 *infra*. The applicant must show a *primâ facie* case that he cannot get payment in any other way, *Harrison* v. *H.*, 13 P. D. 180; *Pierson* v. *Knutsford Estates Co.*, 13 Q. B. D. 666. Where an order is made to tax a solicitor's costs and pay them out of fund in court, and the client then changes his solicitor, and with the knowledge of the latter, assigns his interest, the latter may obtain a charging order under the Act, and he may retain his former clients' papers until payment (*Pilcher* v. *Arden*, 7 C. D. 319; *Ex p. Bull*, 8 C. D. 198; and see App. K. No. 29, 41, 43, *ante*, Pt. I.; Seton, F. 4, 926). Such order is in the nature of an execution, and is subject to prior equities, *Re Wadsworth*, 34 C. D. 155; *Re Knight*, (1892) 2 Ch. 368; cf. *Wilde* v. *Walford*, 53 L. J. Ch. 505.

The order is discretionary, and where a solicitor has already accepted from his client a mortgage or other security for his costs in a pending action to which his client is a party, he cannot obtain the order, *Groom* v. *Cheesewright*, (1895) 1 Ch. 730.

Priority.—The order takes priority *over everything except the claim of a purchaser for value without notice*, *Re Suffield*, 20 Q. B. D. p. 698; *Mackenzie* v. *Macintosh*, 64 L. T. 706; *The Paris*, (1896) P. 77; and as to notice, see *Faithfull* v. *Ewen*, 7 C. D. 495; *Cole* v. *Eley* (1894), 2 Q. B. 180, 350; *The Paris*, *supra*. In *Re Graydon*, (1896) 1 Q. B. 417, the solicitor of a bankrupt was held entitled to his charges for taking out letters patent, &c., as against the trustee in bankruptcy.

Where clients, with their solicitor's knowledge and approval, mortgage their interest in an estate, the subject of an action, the solicitor may obtain an order under the Act, and the charge will take priority over the mortgage (*Faithfull* v. *Ewen*, 7 C. D. 495). But where in an administration suit £1,000 had been preserved to the estate by the exertion of the plaintiff's solicitor, but the plaintiff's share had been mortgaged

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before the suit commenced, and the mortgagee had no notice of the application, the Court refused to grant a charge (*Re Thornhill*, 36 Sol. Jo. 218); and where the solicitors undertook to hold the money according to a direction contained in a letter from the plaintiff, they lost their priority, *Macfarlane* v. *Lister*, 37 C. D. 88. The London agent of a country solicitor is not "employed" by the litigant, and no charge is given to such agent by the Act (*ibid.*); but where property is "recovered" in an action, it is no objection that the solicitor was not employed by the person whose property is recovered, or that such person (being an infant, &c.) could not have employed the solicitor, *Greer* v. *Young*, 24 C. D. p. 553; *Ex p. Tweed*, (1899) 2 Q. B. 167 (C. A.); and where mortgaged property was "preserved" by an action in which the mortgagee declined to join, the solicitors were held entitled to their charge even against the mortgagee, *Scholey* v. *Peck*, (1893) 1 Ch. 709. Although a solicitor may have acted for a mortgagor and a mortgagee, that does not prevent them from claiming priority in respect of a charge which is *given by the law*. *Macfarlane* v. *Lister*, 37 C. D. 88. The charge has priority over a garnishee order (*Shippey* v. *Grey*, 28 W. R. 877), and over the claim of a judgment creditor of the plaintiff under garnishee summons; *Dallow* v. *Garrold*, 14 Q. B. D. 543, and cf. *North* v. *Stewart*, 15 App. Cas. 452; and over the prior claims of debenture holders, *Pelsall Coal, &c., Co.* v. *L. & N. W. Ry. Co.*, 8 Times Rep. 629.

Payment after Notice.—If defendant, or his solicitor, hands over money to plaintiff after notice of his solicitor's lien thereon, he must satisfy the lien, *Ross* v. *Buxton*, 42 C. D. 191, following *Ormerod* v. *Tate* 1 East 464; 6 Rev. Rep. 327.

Property "recovered" or "preserved."—As to what is property "recovered," see *Greer* v. *Young*, 24 Ch. D. 545; *Dallow* v. *Garrold*, *supra*. Though the amount is not ascertained it may be a sum "recovered" within the Act, *Ross* v. *Buxton*, 42 C. D. 190; *The Paris*, (1896) P. 82. As to what is property "preserved," see *Pierson* v. *Knutsford, &c., Co.*, 13 Q. B. D. 666; *Turnbull* v. *Richardson*, 29 Sol. Jo. 239; *Re Dickinson*, W. N. (88) 95; *Harrison* v. *H.*, 13 P. D. 180; *Ex p. Tweed*, (1899) 2 Q. B. 167 (C. A.): and see as to both, *Re Wadsworth*, 29 C. D. 517; *Re Wheal Rose*, 29 Sol. Jo. 222; *Rowlands* v. *Williams*, 53 L. T. 135. Where money is paid by way of compromising an action and is in substance the fruit thereof, the lien attaches, *Ratcliff* v. *Swift*, 32 Sol. Jo. 787. It is always *a question of fact* what property is recovered, &c.; *per* C. A. in *Rowlands* v. *Williams*, *supra*, and cf. *Ross* v. *Buxton*, 42 C. D. 198. Costs ordered to be paid by one party to another, but ordered by C. A. to be paid back, are "recovered" within this section, *Guy* v. *Churchill*, 35 C. D. 490. And where the fund in court is the produce of the rents of real estate paid in by receiver appointed in the action, it is a fund recovered and chargeable hereunder (*Re Knight*, (1892) 2 Ch. p. 372). Money paid into Court to "abide the event" is in course of recovery, and although the action may be compromised, yet it is subject to a charging order hereunder, *Moxon* v. *Sheppard*, 24 Q. B. D. 627. Money paid into court with denial of liability is property "recovered" or "preserved" within the Act (*Emden* v. *Carte*, 19 C. D. 311 (C. A.); *Clover* v. *Adams*, 6 Q. B. D. 622). But where money was paid into Court with a denial of liability, and defendant succeeded in a counterclaim, arising out of the same matter, it was held that the lien of plaintiff's solicitor was limited to *the balance actually recovered*, *Westacott* v. *Bevan*, (1891) 1 Q. B. 774; but see as to this case *Stumore* v. *Campbell, &c., Co.*, (1892) 1 Q. B. 317. And it depends on the circumstances whether money so paid in is held to have been "preserved," *Pierson* v. *Knutsford, &c., Co.*, 14 Q. B. D. 666, and money paid into Court as security for costs is not money "preserved;" *Re Wadsworth, supra;* but see *Hall* v. *H.*, (1891) P. 302. Where an action is dismissed and thereby the plaintiff's claim to property in the

hands of the defendant is defeated, such property is "preserved" for the defendant, and his solicitor is entitled to an order, *Bulley* v. *B.*, 8 C. D. 479, followed *Ex p. Tweed, supra.* One-third share recovered in partition action was charged under the Act (*Lloyd* v. *Jones*, 27 W. R. 655). As to lien upon a judgment recovered by client of solicitor, see *Croghan* v. *Maffett*, 92 L. T. Jo. 64. Alimony ordered to be paid to wife is within the section, but the Court in its discretion will refuse to charge it, *Harrison* v. *H.*, 13 P. D. 180; see also *Cross* v. *C.*, 43 L. T. 533.

Enforcing by Charging Order.—(Seton, 925.) The right to a charge is in the nature of a charge for salvage, is in the discretion of the Court, and is not limited to the interest of the client who employs the solicitor, *Greer* v. *Young*, 24 C. D. 545; *Ex p. Tweed*, (1899) 2 Q. B. 167 (C. A.); *Charlton* v. *C.*, 52 L. J. Ch. 971; *Scholey* v. *Peck*, (1893) 1 Ch. 709, *supra.* It may be given to the solicitor, although he be discharged before trial, *Re Wadsworth*, 29 C. D. 517, and although he has ceased to be the solicitor of the party, *Clover* v. *Adams*, 6 Q. B. D. 622. If a charging order is not obtained, and the client becomes bankrupt, the trustee will get the costs, *Baker* v. *Abbott*, W. N. (97) 38. See (n.) "Bankruptcy," p. 368. The solicitor at the time the fund is recovered has a first charge on the fund for taxed costs of action, and, subject thereto, the discharged solicitor has a lien, *Re Wadsworth*, 34 C. D. 155.

The principle is this, if a man by the exertions he is employed to give has recovered or preserved—*i.e.* created—a fund which but for these exertions would not have existed, the costs incurred by him ought to be the first charge upon it; the charge may be upon the whole fund whether it all belongs to the client or not, and it prevails against prior claims of third persons, when the property has been preserved or enhanced in value (*Greer* v. *Young*, 24 C. D. 552; *Re Pelsall Coal, &c., Co.*, 8 Times Rep. 629), and will be *for costs taxed and to be taxed* (*Charlton* v. *C.*, 32 W. R. 90; *Harrison* v. *Cornwall, &c., Ry. Co.*, 32 W. R. 748; *Jackson* v. *Smith*, 53 L. J. Ch. 972; *Rowlands* v. *Williams*, W. N. (85) 194; *Re Hill*, 33 C. D. 266 (C. A.). (The principle as above stated seems to be supported by the cases referred to and not to be susceptible of the meaning sought to be placed upon it in *Westacott* v. *Beran*, see judgment of *Vaughan-Williams, J.* (1891) 1 Q. B. p. 779). The charge extends to the "net" proceeds recovered, &c., not to the "gross," *Ex p. Brown*, 20 Q. B. D. 693.

What Persons are entitled to.—In *Briscoe* v. *B.*, (1892) 3 Ch. 543, the mortgagee of a solicitor was held entitled to a charging order against certain chattels agreed to be given up to the solicitor's client, the plaintiff. The personal representatives of the solicitor are likewise entitled (*Baile* v. *B.*, L. R. 13 Eq. 497). It cannot be given to the London agent of country solicitor (*Macfarlane* v. *Lister*, 37 C. D. 88).

Order, how obtained, and by whom made.—The order under this Act may be obtained either on summons or petition (D. C. F. pp. 860, 862; Seton, 925), which need not be entitled in the matter of the Act, nor of the solicitor (*Hamer* v. *Giles*, 11 C. D. 942, and see *Brown* v. *Trotman*, 12 C. D. 880; *Clover* v. *Adams*, 6 Q. B. D. 622). The order may be made "by the Court or judge before whom any such suit, matter or proceeding has been heard or shall be depending." The statute is adapted to the practice actually existing, and the word "Court" includes the judges thereof. The application may be to a judge in chambers, and so may be delegated, see *Re Wood, infra.* Preferably, the application should be made to the judge who tried the action, but the word "Court" would seem to include all the judges of the High Court, as it certainly does all the judges of the particular division in which the suit, &c., has been heard or is pending, see *Dallow* v. *Garrold*, 14 Q. B. D. p. 546; *Re Wood*, (1897) 1 Q. B. 314; and cf. *Owen* v. *Henshaw*, 7 C. D. 385. On making the order in the Probate Court, the judge held he had no power to stop the probate until the costs were paid: *Heap* v. *Jackson*, W. N. (86) 192.

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If the C. A. has reversed an order below and ordered the costs given below to be repaid to appellant, the application for a lien on such costs will be to the C. A. (*Guy* v. *Churchill*, 35 C. D. 490). A Court has no power to make a charging order on money paid into a different Court, and the order is not "*ex debito justitiæ*," but in the discretion of the Court (*Pierson* v. *Knutsford, &c., Co.*, 13 Q. B. D. 666).

Enforcing order by sale.—As to the time for having costs raised, an application in an action for administration to have taxed costs raised by sale before further consideration, was held premature (*Re Green*, 26 C. D. 16). In *Rowley* v. *Southwell*, 61 L. T. 805, the former solicitor of the plaintiff had obtained an order charging his taxed costs on the property and giving him liberty to apply. He applied by summons to raise the costs by sale of the property (real estate), and thereon leave was given to substitute service of the summons upon a beneficiary not a party to the action, and the hearing was adjourned, following *Hunt* v. *Austin*, 9 Q. B. D. 598, and see the order made against debenture holders, *Pelsall, &c., Co.* v. *L. & N. W. Ry. Co.*, 8 Times Rep. 629.

Order refused.—Where a long time (nine years) had elapsed before the order was applied for, and other circumstances had intervened affecting the rights of parties interested in the assets preserved, the Court refused the order (*Roche* v. *R.*, 29 L. R. Ir. 339).

Bankruptcy.—The cases in which the discretion of the Court should be exercised are in bankruptcy cases rare, for the trust estate in bankruptcy does not belong to the trustee; in equity it is the property of the creditors, *Re Humphreys*, (1898) 1 Q. B. p. 526 (C. A.); cf. *Jackson* v. *Smith*, 53 L. J. Ch. 972; *Re Graydon*, (1896) 1 Q. B. 417. In *Re Cook*, (1899) 1 Q. B. 863, the Court held it had no jurisdiction to make an order upon dividends payable under the bankruptcy to the client of the solicitor seeking the order.

RETAINER.

Retainer.

Generally as to.—A formal and express retainer is not necessary, the relation may exist, and may be inferred from the acts of the parties, *Bean* v. *Wade*, 2 Times Rep. 157; *Morgan* v. *Blyth*, (1891) 1 Ch. 354. The retainer for a corporation should be under seal (*Arnold* v. *Corp. of Poole*, 4 Man. & Gr. 860; and see *Newington Local Board* v. *Eldridge*, 12 C. D. 359, 360; *Phelps* v. *Upton, &c.*, W. N. (85) 92; *Re Jones*, 36 C. D. p. 110) and cf. *Scott* v. *Clifton Board School*, 14 Q. B. D. p. 503.

A solicitor should have an authority in writing to obtain an order for leave to attend proceedings (*Bird* v. *Harris*, 29 W. R. 45). It is prudent *always* to have a retainer in writing, although not necessary, unless statute or common law require it, see forms, D. C. F. pp. 95, 863. As to the danger which may arise from taking instructions from a third person, see *Cutbush* v. *C.*, 37 Sol. Jo. 685.

Company.—The chairman of a company (limited) has no authority to instruct the solicitor of the company to appear and consent to an order for appointment of provisional liquidator, *Re Bread Supply Association*, W. N. (90) 210. The insertion of a solicitor's name in the Articles as solicitor to the company does not amount to a retainer, *Eley* v. *Positive &c., Co.*, 1 Ex. D. 88.

Partners.—When a managing partner instructs a solicitor to defend an action such solicitor has authority to enter an appearance for the firm, and is not bound to give notice to the other partners of each step in the litigation, *Tomlinson* v. *Broadsmith* (1896), 1 Q. B. 386. And see *Court* v. *Berlin*, (1897) 2 Q. B. 396, which shows that dissolution of the firm does not of itself determine the retainer.

Office of solicitor.—There is no such thing as the office of solicitor, or an official solicitor (*Saffron Walden, &c., Society* v. *Rayner*, 14 C. D. 406; *Re London Metallurgical Co.*, (1897) 2 Ch. p. 269).

Agent, Retainer by.—A general agent may have authority to retain a solicitor to conduct an action, and *if there is authority there is indemnity* (*May* v. *Sherwin*, 27 Sol. Jo. 278; *Court* v. *Berlin, supra*).

London Agent.—A. gave B., a solicitor, a retainer to act for her in a certain administration, "and to take such steps as you may think proper in the matter in my behalf"; a London firm of solicitors issued a writ in the names of A. and B.; held, the retainer was not sufficient to justify issue of writ even by B., but that it certainly could not justify its issue by a firm who were not retained by A., and A.'s name was struck out and the London firm ordered to pay the costs (*Wray* v. *Kemp*, 26 C. D. 169; followed in *Re Scholes*, 32 C. D. 245; and see *Re Gray*, 65 L. T. 743), and, (n.) "Extent of," *infra*, and (n.) "Country Solicitor, London Agent," *infra*, p. 378.

Agent, Liability of Client to.—The client is deemed to employ and to be liable only to the solicitor whom he retains. If this solicitor employs another the latter must look to the solicitor employing him, not to the client: *Reid* v. *Burrows*, (1892) 2 Ch. 413. But this depends upon special custom and does not apply where the solicitor retained employs a solicitor in Ireland: *Hyndman* v. *Ward*, 15 Times Rep. 182.

Marks-man, Retainer by.—See *Re Hill*, 29 Sol. Jo. 519.

Where persons are not sui juris.—Persons not possessing contractual capacity, such as infants, and lunatics so found, cannot retain a solicitor. Cf. Poley on Solicitors (1897), p. 134. See the form of enquiry directed in the case of an alleged lunatic, *Howell* v. *Lewis*, 40 W. R. 88.

Joint-Retainer.—A solicitor retained by A., B., and C. may decline to continue to act for one of them, and cannot be restrained from acting for the others (*Re Flint*, W. N. (85) 163).

Although different defendants say to a solicitor, "You shall be paid by us all the amount of your costs," they do not thereby say, "Anyone of us will pay the whole." (*Re Allen*, 11 C. D. p. 249; see *Burridge* v. *Bellew*, 32 L. T. 807; also *Storry* v. *Honeywood*, 26 Sol. Jo. 564.)

Separate Retainers.—Joint Bill.—See *Re Salaman*, (1894) 2 Ch. 201.

Extent of authority under retainer.—See Poley on Solicitors (1897), 156–163.

Action.—A general authority to act as solicitor does not authorize the commencement of an action, although it may the putting in of a defence, Seton p. 915, Poley 156.

Appearance.—See (n.) "Partners," *supra*. A solicitor retained to act as the solicitor to a trust is not justified in entering an appearance to an action concerning the trust without authority (*Re Gray*, 65 L. T. 743).

Interpleader.—A general retainer does not extend to interpleader proceedings, *James* v. *Richnell*, 20 Q. B. D. 164; cf. *Austin* v. *Macnamara*, 40 Sol. Jo. 71.

Special Journeys.—A solicitor is not justified in making special journeys, or in going to foreign countries without specific retainer (*Re Snell*, 5 C. D. 815. See, however, *The Soto*, (1893) P. 73).

Ordering Sheriff to Seize.—It is not within scope of implied authority of solicitor to direct the sheriff to seize *particular* goods (*Smith* v. *Keal*, 9 Q. B. D. 340; *Williams* v. *Preston*, 20 C. D. 672.

Compromise.—A solicitor, although retained to act, has no authority to

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compromise a claim *before* action brought, *Macaulay* v. *Polley*, (1897) 2 Q. B. 122.

Tender.—Cheque.—A solicitor who is authorised to accept a tender has no authority to accept a cheque instead of money, *Blumberg* v. *Life Interests, &c. Corp.*, (1897) 1 Ch. 171.

Lunatic.—If a person retains a solicitor and becomes a lunatic, the retainer will extend to enable the solicitor to take such steps as may become necessary, *per* Grove, J. (*Fore Street, &c. Co.* v. *Durrant*, 10 Q. B. D. p. 474).

Effect of Retainer at Common Law.—Right to Terminate.—The contract of a solicitor upon a retainer in a common law action is an entire contract to act for the client until the action is finished, and although there may be cases in which, upon reasonable notice, he can give it up and sue his client for costs, yet he cannot do so at his mere will and pleasure (*Underwood* v. *Lewis*, (1894) 2 Q. B. 306; *Court* v. *Berlin*, (1897) 2 Q. B. 396; cf. *Bluck* v. *Lovering*, 35 W. R. 232; *Re Romer*, (1893) 2 Q. B. 286.

Interim Taxation.—Retainer in administration, bankruptcy, or winding up proceedings is not such an entire contract as to prevent interim taxation of costs, *Re Hull*, 9 C. D. 538.

Withdrawal of Retainer.—*Injunction.*—A defendant agreed with M., a third party, that he should defend the action by his—M.'s—solicitor on terms. He was restrained from withdrawing the retainer: *Montforts* v. *Marsden*, (1895) 1 Ch. 11.

Where Solicitor acts without authority.—The proceedings will be stayed, and the solicitor on the record ordered to pay the costs as between solicitor and client of the plaintiff and all the costs of the defendant, following the common law rule laid down in *Reynolds* v. *Howell*, 8 Q. B. 398 (*Nurse* v. *Durnford*, 13 C. D. 764; *La Compagnie, &c.* v. *Whitley*, (1896) 1 Ch. 788; *Williams* v. *Preston*, 20 C. D. 672; *Wray* v. *Kemp*, 26 C. D. 169; *London & Blackwall Ry. Co.* v. *Cross*, 31 C. D. 354 (C. A.). The proper practice is to serve the notice of motion on the defendant as well as on the solicitor, and the order may direct the solicitor to pay the costs of the plaintiff as between solicitor and client, and the costs of the defendant as between party and party (*Newbiggin, &c., Co.* v. *Armstrong*, 13 C. D. 310; Seton, F. 3, 914; *The John Morley, &c. Co.* v. *Barras* (1891), 2 Ch. 386). And so if a solicitor obtains the addition of a party as plaintiff to an action upon an informal consent under O. 16, r. 11, *Duckett* v. *Gover*, 6 C. D. 82; *Fricker* v. *Van Grutten*, (1896), 2 Ch. 649, C. A.; *Geilinger* v. *Gibbs*, (1897) 1 Ch. 479, application by defendant. And if the action is discontinued before the motion is heard that makes no difference, *Gold Reefs, &c., Co.* v. *Dawson*, (1897) 1 Ch. 115. A year after an order had been made appointing new trustees on petition, a co-petitioner applied to have the order rescinded as the petition had not been authorised by them. Held, their names might be struck out of order as co-petitioners, and they might be treated as respondents who had not been served; *Re Savage*, 15 C. D. 557; *Schjott* v. *S.*, 19 C. D. 94; *London & Blackwall Ry. Co.* v. *Cross*, 31 C. D. 361; *Charnock* v. *Court*, 107 L. T. Jo. 300.

Solicitor acting for Defendant, &c., without Authority.—The solicitor to a trust has no right to enter an appearance to and defend legal proceedings without authority (*Re Grey*, 65 L. T. 743).

In *Cutbush* v. *C.*, 37 Sol. Jo. 685, plaintiff's solicitors entered an appearance for A. on his mother's instructions, and it turned out that A. was of unsound mind at the time; great trouble might have been caused and great expense to the solicitor, if all parties had not wished to arrange the matter amicably.

Retainer, Objection to, on Taxation.—A client on taxation can object to particular items on ground of want of retainer, *Re Fenton*, W. N. (94) 128, where leave to do so was given, but not (on the common order), to whole bill, *Re Herbert*, 34 C. D. 504; *Re Frape*, (1894) 2 Ch. 290. But where the solicitor obtains the order to tax, *secus*, *Re Jones*, 36 C. D. 105. See *Re Hilliard*, 35 Sol. Jo. 698. See special order, Seton, No. 8, p. 233.

Defence of Illegal Retainer.—See *Re Thomas*, (1894) 1 Q. B. 747.

Costs.—Before Retainer.—Ratification.—See *Re Watson*, 19 Q. B. D. 234; *Re Hill*, 33 C. D. 266 (C. A.) As to costs of establishing retainer, see *Re Hill*, 33 C. D. 266.

The solicitor appointed by an O. Liq. has no personal claim against him for costs, although the O. Liq. is ordered to pay them to the solicitor, *Re Anglo-Moravian, &c. Co.*, 1 C. D. 130.

The solicitor of a trust has no direct claim on the trust fund for costs, *Staniar* v. *Evans*, 34 C. D. 470.

Costs incurred by solicitor after death of client may be disallowed, *Pool* v. *P.*, 58 L. J., P. 67.

TAXATION.

Practice.—In the C. D. an order for taxation under 6 & 7 Vict. c. 73. s. 37, may be obtained by the party chargeable, as "of course" within one calendar month of delivery of bill, by petition "of course." If no such application is made within the month, either the solicitor or the party chargeable, may obtain such order within twelve months of delivery. After twelve months no order will be made except under very special circumstances, as to which see *Re Boycott*, 29 C. D. 571; *Re Norman, Ex p. Bradwell*, 16 Q. B. D. 673. If the order is not "of course," then application should be made under O. 55. **r.** 2 ('5). In Q. B. D. applications for taxation in an action or matter proceeding are made by ordinary summons. If no action then by originating summons under O. 54. r. 4f. See App. "K." No. 1g. See orders, App. K., Nos. 41—43, Part I.

As to whether a client is a "party chargeable" when his solicitor refuses to make a charge, cf. (n.) "Refusal to Charge," p. 374.

Jurisdiction of Court as to.—In dealing with solicitors' costs, the Court has a threefold jurisdiction: (1) statutory: (2) general, as over its officers, as to which see *Re Thomas*, (1894) 1 Q. B. 747, where a solicitor set up a defence of champerty as a defence to an application for taxation, and *Storer* v. *Johnson*, 15 App. Cas. 203; (3) ordinary, as in the investigation of contested claims; *Re Park*, 41 C. D. p. 331. See R. S. C., O. 65. r. 27, and Appendix N., *supra*, Part I.

Police Court and Quarter Session business.—Costs of such business are taxable in the usual way, *Re Jones*, (1896) 1 Ch. 222.

Common Order to Tax.—The meaning of the clause in the common order (App. K. Nos. 41, 42. Part I. *supra*), which directs the solicitor to give credit for all sums of money by him received of or on account of his client must be read as including and as confined to, all moneys which the solicitor in his character of solicitor or agent of the client has received for, or is legally or equitably liable to pay over to the client, and against which if sued for by the client the solicitor could set off his costs when taxed. Set-off is in fact the real criterion. Cf. the judgment of Lindley, L.J., in *Re Le Brasseur and Oakley*, (1896) 2 Ch. 487—493. But if no costs are due to or claimed by the solicitor, the common order does not involve the taking of an account of all monetary transactions between the solicitor and client, *Re Landor*, (1899) 1 Ch. 818. Cf. (n.)

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"Refusal to Charge," p. 374. The common order cannot be obtained where there are special circumstances, as where there has been an agreement; see Solicitors Act, 1870, s. 4, and Solicitors Remuneration Act, s. 8, p. 580; *Re Heritage*, 3 Q. B. D. 726; *Re Frape*, (1893) 2 Ch. 284; and *Re Lewis*, 1 Q. B. D. 724), or where there is a controversy whether the relationship of solicitor and client existed (*Re Inderwick*, 25 C. D. 279; *Re Ames*, 25 C. D. 73; *Re Hulbert*, 71 L. T. 748). See (n.) "Special Order," p. 373, *infra*. Where an order is made for taxation on the application of the client and his mortgagee, the usual submission to pay should be made by both applicants, though the client may be an undischarged bankrupt, *Re Battams, &c.* (1897), 1 Ch. 699. The submission cannot exclude statute-barred items, see *Re Hughes*, W. N. (99) 125.

If a solicitor has delivered several distinct bills and the client disputes only one, and has paid sufficient to cover the claim on all the bills so that there is no lien on the client's documents, he can get an order to tax the one bill, *Re Ward* (1896), 2 Ch. 31.

A Registrar in the district registry of Manchester or Liverpool has no jurisdiction to make a common order for taxation on an originating petition of course, *Re Porrett* (1891), 2 Ch. 433.

Retainer disputed.—If retainer is disputed, see (n.) "Retainer, Objections to, on Taxation," p. 371. In C. D. a special order is made, Seton, No. 8, p. 233.

Taxation of one of several Bills.—Ought not to be obtained on common order; see *Re Ward*, 28 C. D. 724.

Taxation of Part of Bill.—May be ordered under the inherent jurisdiction of the Court, upon payment into Court of whole amount claimed, but not under Sol. Act, 1843, s. 37: *Storer* v. *Johnson*, 15 App. Cas. 203.

Waiver of Order—Agreed Costs.—Agreed costs will not be paid after order to tax unless upon consent in writing of person interested in the fund. *Re Cositer*, W. N. (98) 8.

Non-compliance with Order—Contempt.—Cf. *Re Lander*, (1899) 1 Ch. 818, and (n.) "Refusal to Charge," p. 374.

Discharge of Order.—If there is any suppression of material facts, *Re Gedge*, 15 B. 257; as, for instance, that a *prior order* had been obtained, or had been refused, or that an action was pending, the order may be discharged; *Re Webster*, (1891) 2 Ch. 102; *Re Robertson*, 42 C. D. 553; *Re Taylor*, (1894) 1 Ch. 503; cf. *Re Emmanuel*, 39 Sol. Jo. 724; *Re Ward*, (1896) 2 Ch. 31; *Re Collyer-Bristow*, 107 L. T. Jo. 301.

Where a solicitor obtained an order to tax, but did not state the fact that the client was of unsound mind and that a petition in lunacy was pending against her, the order was discharged, but under the circumstances, without costs against the solicitor, *Re Armstrong*, (1896) 1 Ch. 536.

Objections to orders of course.—Motion to vary.—Delay.—Motion to vary order of course for taxation of solicitor's bill, on ground that order contained on face of it matters improper to be inserted; the order was obtained on 29 March, 1881; and the facts on which it was urged that order was erroneous, were discovered the same day; 22 April, bill carried in for taxation; 5 July, 1881, bill discussed before taxing-master; 22 Sept., objections overruled by taxing-master, this motion made on 22 Nov. Held too late, following *Re Springall*, 14 L. J. Ch. 12; *Re Tibbitts*, 30 W. R. 177. See also *Re King*, 34 Sol. Jo. 214, where an objection was made to prevent taxation on the grounds of a special agreement as to costs, and that the bill contained scandalous matter.

Enforcing Payment against Client.—If a balance is found due from the client on common order to tax obtained by the solicitor in C. D.

see App. K. No. 42, Part I. ; payment must be enforced by action under O. 14, for the order contains no direction for payment. *Re Debenham, &c.* (1895), 2 Ch. 430.

Special Order.—Where a petition "of course" cannot be presented, the application is by originating summons in both C. D. and Q. B. D., O. 55, r. 2 (15) ; O. 54, rr. 4E, 4F. See *Curwen* v. *Milburn*, 42 C. D. p. 427, for a special order for delivery and taxation of bill and delivery up of documents, and cf. *Re Thompson*, 30 C. D. 441 ; *Re Wood*, W. N. (91), 203 ; and where the bill is statute barred, see (n.) "Statutes of Limitation," p. 378.

Service of Order.—Where an order to tax is obtained by a solicitor against his client, service is necessary ; but where the client gets an order against the solicitor taxation may proceed without service of order on solicitor, *Re Robertson*, 42 C. D. p. 555.

Who may obtain order to tax.—(See Solicitors Act, 1843, ss. 37, 38, Seton, 249 ; (n.) "Practice," *supra*, p. 371.) Trustee in bankruptcy of person entitled (*Re Allingham*, 32 C. D. 36 ; *Re West, King, &c.*, (1892) 2 Q. B. 102). A London agent obtained order to tax as principal ; but the order was set aside on motion of clients (*Re Scholes*, 32 C. D. 245).

Third parties, see s. 38 of Act, and *Re Grundy*, 17 C. D. 108 ; *Re Spencer*, 51 L. J. Ch. 271 ; *Re Cookson & Co.*, 30 Sol. Jo. 305 ; *Re Robertson*, 42 C. D. 553. There is no jurisdiction on application of third parties save under the Act, *Re Jackson*, 40 C. D. 495. A third person (see Seton, 251 (n.)), who has agreed to pay costs, is entitled to have the costs taxed, but cannot raise the defence, which is open to the actual client, of no delivery of signed bill before action (*Greening* v. *Reeder*, 40 W. R. 623 ; *Re Stuart* (1893), 2 Q. B. 201).

A solicitor may obtain an order although retainer disputed, *Re Jones*, 36 C. D. 105.

Assignees, see s. 37 of the Act, and *Re Ward*, 28 C. D. p. 724.

An attempt was made without success to tax a solicitor's bill by originating summons issued by *e. g. t.*, in the matter of the trust estate of the deceased client, on ground that costs had been received by solicitor out of trust estate with notice of breach of trust. Cf. *Re Spencer*, 51 L. J. Ch. 271 ; *Re Jackson*, 40 C. D. 495.

Beneficiaries under a will, giving a solicitor trustee power to charge his costs, have a right to investigate his bills of costs notwithstanding a settlement of accounts between such trustee and his co-trustee, *Re Fish*, (1893) 2 Ch. 413.

Official Liquidator.—Is not entitled to order, see as to the practice when company in liquidation, *Re Liverpool Household Stores*, W. N. (89) 48.

Separate Retainers—Single Taxation.—See *Re Salaman*, (1894) 2 Ch. 201.

Bill of Costs.—Cf. O. 65, r. 27 (58). *Semble*, there must be details and items, otherwise there is no "Bill," *Duffett* v. *McEvoy*, 10 App. Cas. p. 302 ; cf. *Re Baylis*, (1896) 2 Ch. 107. And where a country solicitor employs a London agent, he must in his bill state in detail the items of the London agent's charges where such charges form a substantial portion of the bill, and if this is omitted, the bill is not a complete bill, capable of taxation, *Re Pomeroy*, (1897) 1 Ch. 284.

Signature of Solicitor's Bill.—Signature of bill by assignees of original firm is sufficient within 6 & 7 Vict. c. 73, s. 37 (*Penley* v. *Anstruther*, 52 L. J. Ch. 367, and see O. 65, r. 27 (58) ; and see *Chapple* v. *Megginson*, 2 Times Rep. 808 ; *Re Jones*, 54 L. T. 648).

Delivery of unsigned Bill.—Taxation.—If a solicitor delivers a bill

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though not signed it may be taxed. *Ex p. D'Aragon*, 3 Times Rep. 815.

Alteration of Bill after order to tax.—A lump sum was charged, but it being held there was no agreement, the solicitors were allowed to carry in the detailed items for taxation (*Re Russell*, 55 L. T. 71).

Series of Bills.—Where during protracted proceedings several bills have been sent in, it is a question of fact whether they were sent in as *final* bills, or whether they were merely statements of account—chapters in a volume—*Re Romer* (1893), 2 Q. B. 286.

Assignment of Bill.—As to what is sufficient compliance with Sol. Act, 1843, see *Ingle* v. *McCutchan*, 12 Q. B. D. 518; *Penley* v. *Anstruther*, 52 L. J. Ch. 367.

Accruer of cause of Action on Bill.—The cause of action arises when the work is completed, and the Statute of Limitations runs from that date, not from month after delivery of bill, *Coburn* v. *Colledge* (1897), 1 Q. B. 702. See (n.) "Costs," p. 379.

Delivery of Bill.—The application for delivery is made in the C. D. by petition, when an order "of course" is made, and the order is usually accompanied by an order for taxation, cf. Solicitors Act, 1843, s. 37; *Re Pollard*, 20 Q. B. D. 656; Mem. 1880, W. N. 7; Poley on Solicitors, 384. In the Q. B. D. the application is by summons, in the action, if any, otherwise by originating summons, see O. 54, 4E, 4F, and order App. K., No. 40B. It is no answer to an application for delivery that solicitor has been adjudicated bankrupt. *Ex p. Hopkins*, 32 Sol. Jo. 129. The usual allegation in a petition of course that "the said solicitor delivered unto the petitioner his bill," is not satisfied by a constructive delivery (*Re Robertson*, 42 C. D. 553). Delivery to manager of an asylum held insufficient, in absence of evidence of his being authorised agent to receive delivery, *Re Layton, Steele & Co.*, 38 W. R. 652.

Where the delivery is made for the purpose of enabling the defendant to agree costs, that is not a delivery within the statutes: *Re Hulbert*, 71 L. T. 748.

Refusal to charge.—Power of Court to order delivery of Bill.—Section 37 of 6 & 7 Vict. c. 73, has no application where there is not a "party chargeable," and if a solicitor refuses to make a charge for work done, there is no such person, *Re Griffith*, 7 Times Rep. 268; cf. *Re Landor*, (1899), 1 Ch. 818.

Delivery before Litigation ended.—As to the right of a solicitor in a protracted litigation to *deliver* his bill before the business is at an end, see judgment of Kay, L.J., in *Re Romer*, (1893) 2 Q. B. p. 301, as to *taxation*, see *Re Hall & Barker*, 9 C. D. 538.

Delivery where Scale Applies.—As to delivery within the statute of 1881, s. 8, p. 580, it seems a true bill may be delivered in particular cases, as for instance, where the scale applies, by a bill merely stating the scale item, *Re Baylis*, (1896) 2 Ch. p. 111.

Conditional Delivery of Bill.—Withdrawal.—If a bill is delivered with a condition that it may be withdrawn on a certain condition which is illegal, it cannot be withdrawn; but if the condition is legal, *secus* (*Re Thompson*, 30 C. D. 441; and see *Re Jones*, 54 L. T. 648). If the bill is delivered without any condition, it cannot be withdrawn without consent or order of Court (*Re Heather*, L. R., 5 Ch. 694; *Re Kellock*, 56 L. T. 887; cf. also *Re Griffith*, 7 Times Rep. 268; *Re Wood*, W. N. (91) 203).

Agreement as to Costs.—See Sol. Rem. Act, 1881, s. 8 (n.) p. 580, *infra*. A verbal agreement to pay a lump sum for part costs will not be any

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objection fo an order for the delivery and taxation of the bill (*Re Russell*, 30 C. D. 114; *Re King*, 82 L. T. Jo. 320; *Re West, King & Co.* (1892), 2 Q. B. 102). The agreement must be in writing (*Re Stogdon*, 56 L. J. Ch. 420; cf. *Re Griffith*, 7 Times Rep. 268). But even then the Court has inherent jurisdiction to order taxation. *Re Druce*, 94 L. T. Jo. 583; *Re Jones* (1896), 1 Ch. 222.

Payment.—*Before delivery of Bill.*—There can be no payment within the statute before delivery of a bill, *Re Stogdon*, 56 L. J. Ch. 420, and cf. *Re Street*, 10 Eq. 165; *Re Baylis*, (1896) 2 Ch. 107 (C.A.).

A settled account, coupled with the retainer of verbally agreed costs, is not payment unless a proper bill is delivered, *Re Baylis*. (1896) 2 Ch. 107 (C.A.), correcting *Re Thompson*, 63 L. J. Q. B. 187. But *secus* if costs are agreed in writing as in *Re Frape*, (1893) 2 Ch. 284.

Retention of Costs.—"B." in 1879 charged her property, and her solicitor retained his costs out of the money, and she signed a receipt for the mortgage money and certain accounts produced by her solicitor. B. was held entitled to an order for delivery of bill for taxation, *Re Stogdon*, 56 L. J. Ch. 420, explained in *Hitchcock* v. *Stretton*, *infra*. For the established rule is that *mere retainer* without delivery of a bill, or an agreement in writing agreeing costs, is not payment. So where E. agreed with W. & Co., solicitors, to conduct certain business and deposited 100*l*. with them, and after costs incurred and before delivery of bill, E. and W. & Co. agreed the costs at 60*l*., which sum W. & Co. retained, a divisional Court on the application of the trustee in bankruptcy of E. ordered a bill to be delivered, *Re West King, &c.*, (1892) 2 Q. B. 102; *Pontifex* v. *Farnham*, 41 W. R. 238. But there are cases which show that the delivery of a bill to which previous payment can be referred, makes retention amount to payment. *Ex p. Hemming*, 28 L. T. (o.s.) 144; *Re Thompson*, (1894) 1 Q. B. 462; *Hitchcock* v. *Stretton*, (1892) 2 Ch. 343; *Re Colyer*, 37 Sol. Jo. 83. But where bills are delivered under an order of the Court, that does not make the retention amount to payment within the principle of the last cited cases, *Re Baylis*, (1896) 2 Ch. 107.

And where no bill was delivered, but costs were retained by solicitors who were trustees and executors, and a release executed, and the account settled, the Court, as no error was shown in the account, refused to open it, *Re Webb*, (1894) 1 Ch. 73 (C.A.).

As to payment by giving mortgage, *Ex parte Turner*, 24 L. J. Ch. 71; by giving negotiable security, *Re Romer*, (1893) 2 Q. B. 286; *Re a Solicitor*, 38 Sol. Jo. 239; by allowance in account, see *Re Sutton*, 11 Q. B. D. 378; but see *Re Fish*, (1893) 2 Ch. p. 423: by payment to managing clerk of solicitor by cheque payable to clerk, *Re Heath*, 43 Sol. Jo. 98.

Taxation after payment.—Seton, 247. Only ordered under *special circumstances* (*Re Sutton & Elliott*, 11 Q. B. D. 377). By sect. 41 of the statute (6 & 7 Vict. c. 73) the court has a discretion—although not an absolute one—and this discretion is generally only exercised where there is fraud, or pressure accompanied by overcharge; if overcharge is alleged, the items thereof should be alleged and proved (*Watson* v. *Rodwell*, 11 C. D. 150; *Re Boycott*, 29 C. D. 583, C.A. (Bowen, L.J., dis.)); and see *Re Lacey*, 25 C. D. 301; *Re Griffith Jones*, 32 W. R. 350; *Re Chown*, 52 L. T. 75; *Re Jackson*, 40 C. D. 495; *Re Cheesman*, (1891) 2 Ch. 289; see the result of the taxation in this case, 36 Sol. Jo. 123; *Re H.*, 36 Sol. Jo. 127. Taxation may be ordered after payment made in pursuance of an agreement under Sol. Rem. Act, 1881, s. 8, see *infra*, p. 580; also where client becomes bankrupt and there is suspicion of fraudulent preference. *Re Druce*, 94 L. T. Jo. 583, or where the payment is conditional only, *Re Romer*, (1893) 2 Q. B. 286; *Re Williams*, 65 L. T. 68; *Re a*

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Solicitor, 38 Sol. Jo. 239, or has been made, not on a proper bill delivered but upon a mere cash account, *Re Baylis*, (1896) 2 Ch. 107.

Special Circumstances.—If the Court below decides there are "special circumstances" (and these are not confined to pressure, or overcharge, or any particular kind of circumstances, see *Re Colyer*, 37 Sol. Jo. 83; *Re Munns*, 50 L. T. 356), it will require a strong case to induce the C.A. to interfere, *Re Cheesman*, (1891) 2 Ch. 289. Special circumstances are "those which appear to the judge so special and exceptional as to justify taxation." (*Re Lacey*, 25 C. D. 301; *Re Boycott*, 29 C. D. 571; *Re Chown*, 52 L. T. 75; *Re Norman*, 16 Q. B. D. 673; and cf. *Re Pybus*, 35 C. D. 568; and *Re Jackson*, 40 C. D. 495; *Re Layton, Steele & Co.*, 38 W. R. 652; *Re Paull*, 27 C. D. 484, 485.)

Taxation after twelve months from delivery.—Solicitors Act, 1843, s. 37, prohibits this, except under "special circumstances" (which, it seems, has the same meaning in s. 37 as in s. 41, see (n.) "Special Circumstances," *supra*, and *Re Sutton*, 11 Q. B. D. 377; *Re Norman*, 16 Q. B. D. 673; Poley on Solicitors, 402): and whether the Bill is signed or unsigned, *Re Sutton*, 11 Q. B. D. 377. But although such a bill could not be taxed under the Act, it may be referred to taxing-master for investigation in an administration action, cf. *Re Park*, 41 C. D. 326. The twelve months do not begin to run until details of the charges have been given (*Re Pomeroy*, (1897) 1 Ch. 284.

As to a continuous bill by an agent (*Re Nelson*, 30 C. D. 1).

Costs of Taxation (6 & 7 Vict. c. 73, s. 37).—Bill delivered 83*l.*, "say 78*l.*," written at foot. The 78*l.* was paid, the bill was taxed at 66*l.*, more than five-sixths of 78*l.*, but less than five-sixths of 83*l.* The C.A. held that the bill delivered was a bill for 83*l.*, and that as more than one-sixth had been taxed off, the solicitor must pay the costs of the taxation (*Re Carthew*, 27 C. D. 485; *Re Mackenzie*, 41 W. R. 530). In *Re Paull*, 27 C. D. 485, a bill for 362*l.* was delivered, but only 320*l.* claimed, the bill was taxed after payment at 280*l.* The C.A., following the last case, although there were special circumstances certified, held that the bill delivered was 362*l.*, and that the solicitor must pay the costs of taxation, the special circumstances not being such as to induce the Court to depart from the ordinary rule. In *Re Mackenzie*, 41 W. R. 530, there were special circumstances which induced the Court (C.A.) not to order the solicitor to pay the costs. See O. 65, r. 27 (38b).

In *Re Elwes*, 58 L. T. 580, the bill, off which more than one-sixth had been taxed off, exceeded the sum which the solicitors had been willing to take, no costs given.

Some Miscellaneous Cases Relating to Solicitors on Taxation. (See generally O. 65, r. 27, and nn.).

Bankruptcy.—When the bill of a solicitor employed by the O. R. is taxed, the proper authority sanctioning his employment must be produced (*Re Duncan*, 40 W. R. 409). If the trustee in bankruptcy reject part of a bill and the Court confirm him, the solicitor cannot insist on taxation, *Ex p. Ditton*, 13 C. D. 318. As to payment of solicitor after notice of an act of bankruptcy, *Ex p. Edwards*, 13 Q. B. D. 747; *Re Pollit*, 41 W. R. 89; *Re Charlwood*, (1894) 1 Q. B. 643; *Re Sinclair*, 15 Q. B. D. 616. As to the charges to be made by a solicitor assisting trustees to wind up estate, see *Re Pryor*, 59 L. T. 256, and see *Re Wayman*, 59 L. J. Q. B. 28. As to payment before litigation completed, *Re Hall & Barker*, 9 C. D. 58, and *Underwood* v. *Lewis*, (1894) 2 Q. B. 306.

County Court Action.—Charges for work done before commencement

of action may be allowed on taxation, although not provided for in scale of County Court charges (2 Nov. 1875) (*Re Emanuel*, 9 Q. B. D. 408).

Defendant solicitor in person.—Where a solicitor defends an action in person, he is entitled to same costs as if he had employed solicitor, except in respect of certain items for instructions; *London Scottish, &c., Society* v. *Chorley*, 13 Q. B. D. 872.

Disbursements.—Payment of probate duty is properly included in a bill of costs, *Re Lamb*, 23 Q. B. D. 5.

Solicitor Mortgagee—"Profit Costs."—(See (n.) "Fiduciary," &c., p. 380, (n.) "Profit Costs," p. 381). The effect of recent decisions was that a solicitor-mortgagee could not, in the absence of express contract, obtain, as against the mortgagor or subsequent incumbrancers, any profit costs whatever, but only costs out of pocket. The cases upon this subject noted in the Annual Practice 1896 and 1897, are now, to a great extent, rendered obsolete by the Mortgagees' Legal Costs Act, 1895, which is as follows:—

S. 2.—(1) Any solicitor to whom either alone or jointly with any other person a mortgage is made, or the firm of which such solicitor is a member, shall be entitled to receive for all business transacted and acts done by such solicitor or firm in negotiating the loan, deducing and investigating the title to the property and preparing and completing the mortgage, all such usual professional charges and remuneration as he or they would have been entitled to receive if such mortgage had been made to a person not a solicitor, and such person had retained and employed such solicitor or firm to transact such business, and do such acts; and such charges and remuneration shall accordingly be recoverable from the mortgagor.

(2) This section applies only to mortgages made after the commencement of this Act.

S. 3.—(1) Any solicitor to or in whom either alone or jointly with any other person any mortgage is made or is vested by transfer or transmission, or the firm of which such solicitor is a member, shall be entitled to receive and recover from the person on whose behalf the same is done or to charge against the security for all business transacted and acts done by such solicitor or firm subsequent and in relation to such mortgage or to the security thereby created or the property therein comprised, all such usual professional charges and remuneration as he or they would have been entitled to receive if such mortgage had been made to and had remained vested in a person not a solicitor, and such person had retained and employed such solicitor or firm to transact such business and do such acts, and accordingly no such mortgage shall be redeemed except upon payment of such charges and remuneration.

(2) This section applies to mortgages made and business transacted and acts done either before or after the commencement of this Act.

But it does not affect judgments given before Act was passed, *Eyre* v. *Wynn-Mackenzie* (1896), 1 Ch. 135.

S. 4. In this Act the expression "mortgage" includes any charge on any property for securing money or money's worth.

S. 5. This Act shall not extend to Scotland.

Solicitor-Trustee.—See (n.) "Fiduciary," &c., p. 380; (n.) "Profit Costs," p. 381. Where a solicitor or his firm appears in a suit or action on behalf of himself and co-trustee, and the expense is not thereby increased, the solicitor is entitled to the usual costs, *Cradock* v. *Piper*, 1 Mac. & G. 664 (considered *Re Corsellis*, 34 C. D. 682; *Hibbert* v. *Lloyd*, (1893) 1 Ch. 129).

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So a solicitor-trustee may be allowed to receive profit costs where he has agreed with his partner to act for him and to receive the profit for his, the partner's, own benefit (*Clack* v. *Carlon*, 7 Jur. N. S. 441), and *semble*, the proper course is to ascertain what the profit costs are, and then to allow the partner his share, see *Eyre* v. *Wynn-Mackenzie*, (1894) 1 Ch. p. 229, and (n.) "Profit Costs," p. 381.

Statutes of Limitation.—The order for taxation (see forms App. K., Nos. 41, 42, Part I., *supra*) requires the taxing-master to certify "the amount due." That meant including claims which may be barred by statute (*Curwen* v. *Milburn*, 42 C. D. 424: cf. *Re Hughes*, 107 L. T. Jo. 347). Although so barred, they may be payable, as, for instance, costs, charges and expenses of trustees (*Budgett* v. *B.*, (1895) 1 Ch. 202). In *Re Margetts* (1896), 2 Ch. 263, one of several bills was statute barred, the taxing-master taxed it, and it had to be paid. See *Coburn* v. *Colledge*, cited (n.) "Costs," p. 379.

Uncertificated Solicitor.—Costs incurred during a period in which the solicitor was without a certificate cannot on taxation be taken into account, *Re Sweeting*, (1898) 1 Ch. 268.

Evidence, Preparation of.—Costs of witnesses present but not called should be allowed (*Levetus* v. *Newton*, 28 Sol. Jo. 166), and see *Whitely Exerciser Co. Gamage*, (1898) 2 Ch. 405.

GENERAL CASES AS TO SOLICITORS.

Agency.—*Country Solicitor—London Agent.*—See also (n.) "Retainer," p. 368. Journeys to London will be allowed on taxation if authorised by client (*Re Storer*, 26 C. D. 189). And as to allowing costs of attendance in London of Liverpool solicitor in District Registry cases, see *Re Dixon*, (1898) 2 Ch. 443, and O. 65, r. 27 (43). As to delivery of cash accounts by agent and effect of, *Re Nelson*, 30 C. D. 1. As to order to tax, cf. *Re Haddesley*, 35 Sol. Jo. 563; *Re Johnson and Weatherall*, 37 C. D. 433. A London agent is not entitled (unless by agreement) to participate in interest on costs paid by client. The London agent is entitled to be repaid his disbursements and to receive not half the profits, but half the profit charges, whether the client paid them or not, and to nothing more (*Ward* v. *Lawson*, 43 C. D. 353 (C.A.). Where the London firm and the country firm have a common partner, see *Re Borough, &c. B. Soc.*, (1894) 1 Ch. 289.) As to lien of town agent, see (n.) "Between," &c., *supra*, p. 364. As to suit for an account by country solicitor against town agent, see *Ward* v. *Eyre*, 15 C. D. 130. As to the fiduciary character of a London agent, *Litchfield* v. *Jones*, 36 C. D. 531. The relation between London agents and country solicitors is that of solicitor and client (*Reid* v. *Burrows*, (1892) 2 Ch. 413). See also (nn.) "London Agent," "Liability of Client to Agent," *supra*, p. 369.

The allowance for costs of attendance is within the discretion of the taxing-master, and will be made where it is necessary that the solicitor who has had the conduct of the case from the commencement should be present at the trial: *The Soto*, (1893) P. 73, and see *Briton Ferry, &c.* v. *Rhonda Valley R. C.*, 39 Sol. Jo. 472; *Re Dixon*, *supra*.

Misappropriation by Town Agent.—See this (n.), p. 382.

Appeal.—Misconduct of Solicitor.—There must always be a right to an appeal, on the question of misconduct; *Re Milton*, 32 W. R. 238; *Re Bradford*, 15 Q. B. D. 635; from striking off rolls appeal lies to C. A., *Re Hardwick*, 12 Q. B. D. 148; see (n.) "Appeal," p. 360.

Appeal.—Refunding Costs.—If an appeal succeeds the solicitor of the respondent will not in the absence of any misconduct or undertaking on his part be personally liable, on failure of his client to do so, to refund any costs he may have received from appellant. *Hood-Barrs* v. *Crossman* (1897), A. C. 172. See (n.) "Undertaking by," p. 357.

Certificate—*Renewal of.*—See J. A. 1881, s. 24, Part V., *post*; Solicitors Act, 1888, s. 16: Solicitors Act, 1899; and *Re Chaffers*, 15 Q. B. D. 467. As to use of name of certificated solicitor by a solicitor uncertificated, see *Marsh* v. *Joseph*, (1897) 1 Ch. 213. Renewal after suspension, see *Re Solicitors Act*, 1843, 47 W. R. 575; and Solicitors Act, 1899, s. 2; see also (n.) "Uncertificated Solicitor," p. 358.

Clerk, Articled.—*Premium.*—No return of, on death of solicitor during term (*Ferns* v. *Carr*, 28 C. D. 409).

Commission.—Solicitor has no right to take, unless the client knows and acquiesces in; *Copp* v. *Lynch*, 26 Sol. Jo. 348; and cf. *G. W. Insurance Co.* v. *Cunliffe*, L. R. 9 Ch. 525; *Baring* v. *Stanton*, 3 C. D. 502.

Costs.—*Action for.*—Time begins to run under Statutes of Limitation and Solicitors Act, 1843, s. 37, from time of delivery of bill, *Coburn* v. *Colledge*, *infra*. The right to send in bill and insist on payment arises *primâ facie* on the conclusion of the business, but circumstances will alter this rule. *Re Romer*, (1893) 2 Q. B. 286. The cause of action, in the case of solicitor's costs, arises when the work is completed, and therefore the Statute of Limitations begins to run from that time, and not from a month from delivery of bill, *Coburn* v. *Colledge*, (1897) 1 Q. B. 702. An action lies upon an order for the payment of costs, *Norton* v. *Gregory*, 73 L. T. 10. And if a balance has been found due from a client, on the common order to tax (App. "K." No. 42, Part I., *supra*) obtained by the solicitor, the solicitor cannot enforce payment by summons, but must bring an action, *Re Debenham & Walker*, (1895) 2 Ch. 430.

In *Smith* v. *Edwardes*, 22 Q. B. D. 10, a writ was issued and application for judgment made under O. 14, on an *untaxed bill*, see the order made; and see *Lumley* v. *Brooks*, 41 C. D. 323; Seton, pp. 237, 244. In *Slater* v. *Cuthcart*, 8 Times Rep. 92, the defendant counter-claimed for negligence and the action was stayed until trial thereof. The defence of "no signed bill delivered" is available only to actual client, not to third person who has agreed to pay costs (*Greening* v. *Reeder*, 40 W. R. 263). In an Irish case, *Gilsenan* v. *M'Govern*, 30 L. R. Ir. 300, it was held that in an action for untaxed costs judgment in default of defence should be for full amount without any reference to tax. See (n.) "Statutes of Limitation," p. 378.

Action for Account of.—A member of a syndicate brought an action against the promoter, who had also acted as solicitor, for an account of moneys received, &c., and for payment. Kay, J., thinking the Solicitors Act gave a summary remedy, dismissed action (*Phillips* v. *Galmoye*, 29 Sol. Jo. 422).

Agreement as to.—See Solicitors Remuneration Act, s. 8, p. 580.

Costs ordered to be paid by.—See O. 65, r. 11 (n.), and (n.) "Negligence of," p. 382, *infra*; and as to costs of an appeal, alleged to have been the solicitor's and not the client's, cf. *Tatum* v. *Tatum*, 30 Sol. Jo. 340 See also *Gibbs* v. *Tredwell*, 30 Sol. Jo. 181.

Profit Costs.—See (n.) p. 381.

Refunding Costs paid.—See (n.) "Appeal. Refunding Costs," *supra*.

Future Costs. Money for paid to Solicitor. Bankruptcy.—In *Re*

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Pollitt, (1893) 1 Q. B. 175, money for future costs was paid by a client to his solicitor, who then executed a deed of assignment. The trustee in bankruptcy recovered the money from the solicitor; but cf. *Re Charlwood*, (1894) 1 Q. B. 643; *Re Beyts and Craig*, 42 W. R. 432.

Implied Agreement to pay. Executors.—See *Re Bentinck*, 37 Sol. Jo. 233.

Interest on sum certified.—See O. 65, r. 1, (n.) "Interest on Costs."

Staying payment out of Court for Costs.—Court refused to stay payment out of sum found due on taxation pending review thereof (*Re Barber*, 54 L. T. 728).

Covenant. — *Restrictive.* — As to breach of a restrictive covenant not to practise as a solicitor entered into by an infant and his father, see *Hayne* v. *Burchell*, W. N. (90) 207; *Llewellyn* v. *Simpson*, 91 L. T. 9.

Covenant by defendant not to "transact" business with clients of plaintiff firm. The plaintiff firm were London solicitors. The defendant had acted as agent of certain country solicitors, of whom the plaintiff firm had previously acted as agents, held a breach (*Reid* v. *Burrows*, (1892) 2 Ch. 413).

Fiduciary or quasi-fiduciary Relation.—See (nn.) "Profit Costs," p. 381, *infra*, "Solicitor-Mortgagee," *supra*, p. 377, "Solicitor-Trustee," p. 377.

Solicitor to Trustees.—A solicitor to trustees is not solicitor to the trust estate, but his retainer is from the trustee personally, who is liable, and alone liable, for his costs (*Staniar* v. *Evans*, 34 C. D. p. 477; cf. also *Re Partington*, 57 L. T. 654; solicitor of trustee may accept payment out of trust estate of costs properly incurred; *Re Blundell*, 40 C. D. 370).

Direction to Trustees to employ a particular solicitor.—See *Foster* v. *Elsley*, 19 C. D. 518.

Solicitor for lender and borrower.—D. acted as solicitor for H. and C. in preparation of Bill of Sale; see as to his duty and position, *Re Cann*, 13 Q. B. D. p. 40.

Leave to Solicitor to Bid.—Where a solicitor has leave to bid in an administration suit in which his client is defendant, or he buys under a contract sanctioned by Court, the fiduciary relation is put an end to (*Boswell* v. *Coaks*, 23 C. D. 302; see 11 App. Cas. 232).

London Agent.—As to the fiduciary capacity of a London agent towards the country client, *Lichfield* v. *Jones*, 36 C. D. 530.

Duties undertaken by Solicitor with regard to Investment.—Kekewich, J., in *Dooby* v. *Watson*, 39 C. D. 182, states the position of a solicitor with reference to money he has to invest as a solicitor, not as a scrivener, and points out how onerous is the duty he has to perform when the client leaves the whole matter to him and the solicitor undertakes the responsibility of seeing that the investments are safe, see *Hackney* v. *Knight*, 7 Times Rep. 254; *Moore* v. *Knight*, (1891) 1 Ch. 547; *Blyth* v. *Fladgate*, (1891) 1 Ch. 337; *Field* v. *F.*, (1894) 1 Ch. 425; *Brinsden* v. *Williams*, (1894) 3 Ch. 185; *Stokes* v. *France*, (1898) 1 Ch. p. 223.

Mortgage and other transactions.—It is the duty of a solicitor who is a mortgagee of his client to explain the effect of consolidation clause, *Climpson* v. *Coles*, 32 Sol. Jo. 610. See the Mortgagees Legal Costs Act, 1895, p. 377, *supra*. It is doubtful whether the Act enables a solicitor-trustee who advances money to charge the usual costs.

It is not within the ordinary duties of a solicitor to advise as to sufficiency in point of value of intended security, *Scholes* v. *Brook*, 63 L. T. 837; see (n.) "Duties undertaken by," &c., *supra*.

Injunction to restrain solicitor-mortgagee from selling (*M'Cleod* v. *Jones*, 24 C. D. 289). As to profit made by solicitor-mortgagee in contract with client, see *Tonkin* v. *Hughes*, 1 Times Rep. 468; *Eyre* v. *Hughes*, 2 C. D. 148.

It is the duty of a solicitor-mortgagee in an *ordinary* mortgage transaction to insert the ordinary restrictions on the power of sale or to explain the omission to his client (*Cockburn* v. *Edwards*, 18 C. D. 449; *Readdy* v. *Pendergast*, 83 L. T. Jo. 43; *Craddock* v. *Rogers*, 53 L. J. Ch. 968; *Re Bell*, 30 Sol. Jo. 29; but where the transaction is out of the ordinary course, see *Pooley* v. *Whetham*, 33 C. D. p. 111 (C. A.)). See (n.) "Negligence of," p. 382.

Where the balance of sale money is to be paid to the mortgagor a solicitor who has acted for mortgagor and mortgagee cannot retain it, *Re Bell*, 34 C. D. 462.

Trustee (*Constructive*).—*Re Blundell*, 40 C. D 370; *Mara* v. *Browne*, (1896) 1 Ch. 199; *Plaskitt* v. *Eddis*, 79 L. T. 136.

Trustee (de son tort).—In *Brinsden* v. *Williams*, (1894) 3 Ch. 185, it was sought to make solicitors, who had acted as agents of a trustee, liable for the insufficiency of a mortgage security, the money having been paid through them, but they were held not liable: see *Rae* v. *Meek*, 14 App. Cas. 558.

"*Profit costs*"—"*Usual professional charges*."—The general rule is that a solicitor-trustee cannot make any profits as solicitor on business done by himself or firm, *Broughton* v. *B.*, 5 De G. M. & G. p. 164; *Liquidators, &c.* v. *Coleman*, L. R. 6 H. L. p. 208; see (n.) "Solicitor Mortgagee," *supra*, p. 377.

When a solicitor-trustee or executor is to be at liberty to make "the usual professional charges," all items not of a strictly professional nature will be disallowed, *Re Chapple*, 27 C. D. 584; *Re Bedingfield*, 57 L. T. 332.

Testator by his will appointed his solicitor one of his trustees with power to transact business, and he was to be allowed to make the "*usual professional or other proper and reasonable charges*" for all business done and time expended in relation thereto. The estate was administered, the solicitor-trustee being a defendant, and his bill when carried in for taxation included items of charge for business not usually transacted by a solicitor. The Master disallowed these, but North, J., held that his charges were not to be limited to professional charges (*Re Ames*, 25 C. D. 72 and cf. *Re Fish*, (1893) 2 Ch. 413). The best form of clause is that given in Wolstenholme, 5th ed. p. 94. The *cestuis que trust* have a right to investigate the trustee's accounts and the trustee's bills of costs, *Re Fish*, *supra*, and see *Re Chapple*, 27 C. D. 584. Where a solicitor attests a will containing such a clause, he cannot charge profit costs, *Re Barber*, 31 C. D. 665; *Re Pooley*, 40 C. D. 1; cf. *Re Fish*, (1893) 2 Ch. p. 418; *Re White*, *infra*, but if the will be republished, *secus*, *Re Trotter*, (1899) 1 Ch. 764. If the estate is insolvent the solicitor will not, as against creditors, be entitled to his profit costs, *Re White*, (1898) 1 Ch. 297; 2 Ch. 217 (C. A.), for he takes such costs as a gift, and the incidents of a legacy attach to it, *Re Thorley*, (1891) 2 Ch. 613; *Re White*, *supra*.

It is the duty of solicitor-trustees to tell their *cestui que trust* that he has a right to have a bill of costs delivered and to have it taxed. But if this is not done, and the costs are retained by the solicitors, a release executed, and the account settled, it will not be reopened unless error is shown, *Re Webb*, (1894) 1 Ch. 73 (C.A.), and cf. *Eyre* v. *Wynn-Mackenzie*, (1894) 1 Ch. 218.

A trustee-solicitor, defendant in an action for administration, sold his

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business during the suit; the purchaser, on being paid his costs, handed over half the profit costs to the solicitor-trustee. Application for order that defendant trustee should pay the sum into Court refused. The remedy, if any, is by action for misfeasance, *Re Thorpe*, (1891) 2 Ch. 360.

Purchases by Solicitors from Clients.—The extent of a solicitor's disability to purchase from his client is stated by Lord O'Hagan in *McPherson* v. *Watt*, 3 App. Cas. p. 266. A solicitor having the conduct of a suit cannot purchase the subject-matter thereof, *Simpson* v. *Lamb*, 7 E. & B. 84; *Pittman* v. *Prudential, &c.*, 13 Times Rep. 110; but if he take an assignment thereof before he becomes solicitor to the parties, *semble*, *Davis* v. *Freethy*, 24 Q. B. D. 519. The obligation on a solicitor dealing with his client extends to dealings between the solicitor and the trustee in bankruptcy of his client, *Luddy's Trustee* v. *Peard*, 33 C. D. 500. As to a sale by a mortgagee to his solicitor or agent, see *Martinson* v. *Clowes*, 21 C. D. 857; *Nutt* v. *Easton*, (1899) 1 Ch. 873.

Gift to Solicitor.—A gift made to a solicitor by a client whilst the relation of solicitor and client subsists is voidable (*Tyars* v. *Alsop*, 37 W. R. 338; *Boswell* v. *Coaks*, 23 C. D. 302. Cf. *Barron* v. *Willis*, W. N. (99) 109.

Misappropriation.—As to the liability of a solicitor concerned in a proceeding in which by the fraud of another solicitor payment was obtained of money in Court, see *Marsh* v. *Joseph*, (1897) 1 Ch. 213.

Misappropriation by Town Agent.—The purchase-money of property sold by the Court was paid to a country solicitor, who sent it to his town agent, by whom it was misapplied. The country solicitor was held liable (*Asquith* v. *A.*, W. N. (85) 31).

Misdemeanour. *Under* 24 & 25 *Vict. c.* 96, *s.* 76.—A solicitor called in money invested on mortgage and appropriated it to his own use, held not within Act as intrusted to him for "safe custody" (*Re W. H. Newman*, 26 Sol. Jo. 185).

Misrepresentation.—*Insufficient security.*—*Carelessness.*—Y. on representations of his solicitor H., which H. knew were untrue, advanced money on mortgage, the security turned out to be insufficient; H. died, and the client brought an action against the executors of H. Held that they were not liable, no claim having been made against H. in his life (*Young* v. *Wallingford*, 31 W. R. 838; and see *Re Partington*, 57 L. T. 654).

Negligence of.—The older cases on this subject are well summed up by Tindal, C.J., in *Godefroy* v. *Dalton*, 6 Bing. 460. A solicitor having the conduct of an action paid purchase-money into Court under an order, but omitted to lodge a request for investment; held he was liable to the court, as well as his client, for the due discharge of his duty, and ordered on summons to make good loss (*Batten* v. *Wedgwood*, 31 C. D. 346; but cf. *MacDougall* v. *Knight*, *infra*). Negligence in giving notice of equitable assignment (*Bean* v. *Wade*, 2 Times Rep. 157, and see *Re Massey & Carey*, 26 C. D. 459; *Armstrong* v. *Milburn*, 54 L. T. 723). As to non-investment of money pursuant to order, see *MacDougall* v. *Knight*, W. N. (87) 68 (C. A.). As to negligence in not giving proper instructions to a valuer, *Pretty* v. *Fowke*, 3 Times Rep. 845. Negligence (alleged) in allowing clerk access to strong-room, *Fellowes* v. *S. Peter's Park Society*, 32 Sol. Jo. 504. In not giving a trustee client information as to the rules of the Court laid down for guidance of trustees, *Morgan* v. *Blyth*, (1891) 1 Ch. 361; *Stokes* v. *Prance*, (1898) 1 Ch. p. 224; or as to the legal effect of any step taken by the client with regard to trust funds in his hands, *Re a Solicitor*, 39 Sol. Jo. 219. As to alleged negligence in investment of mortgage-money, cf. *Dooby*

v. *Watson*, 39 C. D. 178; *Wood* v. *Jones*, 61 L. T. 551; *Scholes* v. *Brook*, 63 L. T. 837; (n.) "Misrepresentation," *supra*. Where an erroneous order and loss to trust fund was caused by negligence of solicitor, he had to make good deficiency, and pay costs of petition to make him (*Re Dangar*, 41 C. D. 178). Plaintiff, the law clerk of defendant, advised an action in the Palatine Court to obtain a charge under the Public Health Act; the action was dismissed. The plaintiff then brought an action against defendant for costs, they counterclaimed for negligence in not bringing action in County Court instead of Palatine Court; held not actionable negligence, *Barker* v. *Fleetwood, &c., Commissioners*, 6 Times Rep. 430 (C.A.); *Lumley* v. *Brooks*, 41 C. D. 323; and see *Slater* v. *Cuthcart*, 8 Times Rep. 92. If a solicitor is retained to conduct litigation on behalf of a firm, it is not negligence in him if he does not give notice to each partner in the firm of every step in the litigation, *Tomlinson* v. *Broadsmith*, (1896) 1 Q. B. 386; advising on title, alleged negligence, *Farmer* v. *Turner*, 15 Times Rep. 522.

In *Re a Solicitor*, 8 Times Rep. 75, it appeared to a judge before whom an action was tried that the solicitor had been guilty of negligence in not making proper inquiries, and he therefore sent the matter to the committee of the Law Society to be reported upon.

Where negligence or other breach of duty is committed by a solicitor in a matter of which the Court has seisin, the Court can order him to make good the loss, but cannot mulct him in damages, *Marsh* v. *Joseph*, (1897) 1 Ch. 213; cf. *Stokes* v. *Prance*, (1898) 1 Ch. p. 224.

If, after taxation and order on the client to pay, the client has a claim against his solicitor for negligence, he must bring an action to enforce it. *Ex p. Ford*, 33 Sol. Jo. 155.

Statute of Limitations.—The Statute of Limitations runs in favour of the solicitor from the date of the negligent act, not from the date of the discovery of the negligence, *Wood* v. *Jones*, 61 L. T. 551, *supra*.

Partnership. *Dissolution—Right to name.*—If the agreement is silent as to goodwill, each may use name of old firm (*Chappell* v. *Griffith*, 53 L. T. 459).

Partnership Liability (see Partnership Act, 1890, ss. 10—12).—If it appears that a matter has been so dealt with as to make it the firm's business, or that the members thereof had notice of it in their books and letters, these are points to be considered in determining whether the partners are liable for wrongful act of co-partner (*Cleather* v. *Twisden*, 28 C. D. 340. As to deposit for safe custody, *Blyth* v. *Fladgate*, (1891) 1 Ch. 337; *Moore* v. *Knight*, (1891) 1 Ch. 547; *Hackney* v. *Knight*, 7 Times Rep. 254); *Marsh* v. *Joseph*, (1897) 1 Ch. 213. And see, as to deposit of securities for transmission to another client, *Rhodes* v. *Moules*, (1895) 1 Ch. 236, in which *Cleather* v. *Twisden*, *supra*, was distinguished. Cf. further on this subject, *Dean* v. *Twisden*, 27 Sol. Jo. 653, where the dealing was held to have been with the solicitor as a trustee and not as a solicitor; *Dewar* v. *Brooke*, 54 L. J. Ch. 830; *Hughes* v. *Twisden*, 55 L. J. Ch. 481; *Chubb* v. *Button*, 10 Times Rep. 580; *Mara* v. *Browne*, (1895) 2 Ch. 69; *Plaskitt* v. *Eddis*, 79 L. T. 136. It is not within the scope of the implied authority of a solicitor carrying on business in partnership, to constitute himself a constructive trustee, *Mara* v. *Browne*, (1896) 1 Ch. 199.

Retainer.—As to authority of a partner to retain a solicitor, see *Tomlinson* v. *Broadsmith*, (1896) 1 Q. B. 386; *Court* v. *Berlin*, (1897) 2 Q. B. 396.

Receiver.—The appointment of a member of the firm of plaintiff's solicitors is not a proper appointment (*Allen* v. *Lloyd*, 12 C. D. 447 (C.A.).

Scrivener or Solicitor.—See *Chubb* v. *Button*, 10 Times Rep. 580.

Solicitors.

General Cases.

Treasury.—The agent of the solicitor to Treasury must account for costs received by him, *Re Parkinson*, 3 Times Rep. 528. As to the liability of the Commissioners of the Treasury to replace a fund in Court paid out to wrong person through fraud, see *Marsh* v. *Joseph*, (1897) 1 Ch. 213.

Undertaking.—A summary order for payment by the solicitor of a debt guaranteed by him can be made, *Re Pass*, 35 W. R. 410; and an undertaking by can be enforced by motion, although no cause pending, *Re F. C.*, W. N. (88) 77. See this (n.) p. 357.

PART V.

DIVISION I.

JUDICATURE, ARBITRATION, AND COUNTY COURTS ACTS.

(The Judicature Acts are printed as revised by the Statute Law Revision and other Acts.)

THE

SUPREME COURT OF JUDICATURE ACT, 1873.

(36 & 37 VICT. c. 66.)

An Act for the constitution of a Supreme Court, and for other purposes relating to the better Administration of Justice in England; and to authorise the transfer to the Appellate Division of such Supreme Court of the Jurisdiction of the Judicial Committee of her Majesty's Privy Council.

[5th August, 1873.]

Jud. Act, 1873, ss. 1, 2.

Short title.

1. This Act may be cited for all purposes as the "Supreme Court of Judicature Act, 1873."

See J. A. 1875, s. 1; J. A. 1877, s. 1; J. A. 1879, s. 1; J. A. 1884, s. 1; and as to the meaning of the words "The Principal Act" and "the Acts," O. 71, r. 1.

As to what Acts may be included in the citation "The Judicature Acts, 1873 to 1894," see the Short Titles Act, 1896.

2. [This Act, except any provision thereof which is declared to take effect on the passing of this Act, shall commence and come into operation on the second day of November, 1874.]

This Act passed on 5th of August, 1873. Its operation was postponed by the J. A., 1874, until the 1st of November, 1875, and on that day it "commenced." Cf. (n.) "The commencement," p. 459.

Jud. Act, 1873, ss. 3, 4.

PART I.

Constitution and Judges of Supreme Court.

Union of existing Courts into one Supreme Court.

3. The several Courts hereinafter mentioned (that is to say), The High Court of Chancery of England, the Court of Queen's Bench, the Court of Common Pleas at Westminster, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, the Court for Divorce and Matrimonial Causes, *and the London Court of Bankruptcy*, shall be united and consolidated together, and shall constitute, under and subject to the provisions of this Act, one Supreme Court of Judicature in England.

"**One Supreme Court of Judicature.**"—This part of the Act of 1873 (ss. 3 to 15) deals with the constitution and judges of the Supreme Court.

On the 1st of November, 1875 (see s. 2 and (n.), *supra*), the then existing Courts of Law and Equity (except the Court of Bankruptcy, see J. A. 1875, s. 9, 33, and Second Schedule, since included therein by Bankruptcy Act, 1883, s. 93, and the Court of Arches) were by sections 3, 4, 5 hereof consolidated into one "Supreme Court of Judicature."

The "Supreme Court of Judicature" consists of two divisions, "Her Majesty's High Court of Justice," and "Her Majesty's Court of Appeal" (s. 4, *infra*). By s. 13 of the Interpretation Act, 1889, the expression "Supreme Court," when used with reference to England or Ireland, shall mean the Supreme Court of Judicature in England or Ireland, as the case may be, or either branch thereof.

The High Court of Justice.—(S. 5). The High Court is divided into three divisions (ss. 31, 32 (n.), *infra*), and now (August, 1899) consists of the Lord Chancellor (President) and five justices of the Chancery Division, to which an additional judge is to be shortly appointed; the Lord Chief Justice of England (President) and fourteen justices of the Queen's Bench Division; the President and one justice of the Probate, Divorce, and Admiralty Division. As to meaning of "High Court," see Interpretation Act, 1889, s. 13 (3).

The title of the judges of the H. C. (other than the Presidents) is "Justices of the High Court," J. A. 1877, s. 4.

Jurisdiction of High Court.—See s. 4 (n.).

Court of Appeal.—(See Interpretation Act, 1889, s. 13 (2).) The Court of Appeal now (1899) consists of six "ex officio" judges, namely, the Lord Chancellor (J. A. 1875, s. 4), who is President (J. A. 1875, s. 6), the Lord Chief Justice of England (J. A. 1875, s. 4), the Master of the Rolls (J. A. 1875, s. 4; J. A. 1881, s. 2), the President of the Probate, Divorce, and Admiralty Division (J. A. 1881, s. 4); and of five ordinary judges (J. A. 1881, s. 3), with the title of Lords Justices of Appeal (J. A. 1877, s. 4). As to ex-Chancellors, see J. A. 1891, s. 1.

Jurisdiction of C. A.—See s. 4 (n.).

Division of Supreme Court into a Court of original and a Court of appellate jurisdiction.

4. The said Supreme Court shall consist of two permanent Divisions, one of which, under the name of "Her Majesty's High Court of Justice," shall have and exercise original jurisdiction, with such appellate jurisdiction from inferior Courts as is hereinafter mentioned, and the other of which, under the name of "Her Majesty's Court of Appeal," shall have and exercise appellate jurisdiction, with such original jurisdiction as hereinafter mentioned as may be incident to the determination of any appeal.

"**H. M. High Court of Justice.**"—See this (n.) s. 3, *supra*.

Original jurisdiction of High Court.—S. 16, *infra*.

Appellate jurisdiction of High Court.—See ss. 45 and 47, *infra*; J. A. 1884, s. 8; J. A. 1894, s. 2. As to power to make Rules regulating procedure on appeals, see J. A. 1884, s. 23 and (n.); O. 59, rr. 9—17.

"**H. M. Court of Appeal.**"—See this (n.) s. 3, *supra*.

Original or co-ordinate jurisdiction of C. A.—See as to original jurisdiction, O. 58, r. 4 (n.); as to co-ordinate, s. 19, (n.) "For all the purposes of," p. 398.

Appellate jurisdiction of C. A.—See ss. 18, 19: new trial, J. A. 1890, s. 1; practice and procedure, J. A. 1894, s. 1 (4), and O. 58.

Constitution of High Court of Justice.

5. Her Majesty's High Court of Justice shall be constituted as follows: the first judges thereof shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, the several Vice-Chancellors of the High Court of Chancery, the Judge of the Court of Probate and of the Court for Divorce and Matrimonial Causes, the several puisne justices of the Courts of Queen's Bench and Common Pleas respectively, the several junior barons of the Court of Exchequer, and the judge of the High Court of Admiralty: except such, if any, of the aforesaid judges as shall be appointed ordinary judges of the Court of Appeal.

Subject to the provisions hereinafter contained, whenever the office of a judge of the said High Court shall become vacant, a new judge may be appointed thereto by Her Majesty, by letters patent. All persons to be hereafter appointed to fill the places of the Lord Chief Justice of England, the Master of the Rolls, and their successors respectively, shall continue to be appointed to the same respective offices, with the same precedence, and by the same respective titles, and in the same manner respectively as heretofore. Every judge who shall be appointed to fill the place of any other judge of the High Court of Justice shall be appointed in the same manner in which the puisne justices and junior barons of the Superior Courts of Common Law have been heretofore appointed.

All the judges of the said Court shall have in all respects, save as in this Act is otherwise expressly provided, equal power, authority, and jurisdiction; and shall be addressed in the manner which is now customary in addressing the judges of the Superior Courts of Common Law.

The Lord Chief Justice of England for the time being shall be President of the High Court in the absence of the Lord Chancellor.

Present Constitution of High Court.—See s. 3 (n.).

"**Lord Chancellor.**"—See J. A. 1875, ss. 3, 6.

"**Master of the Rolls.**"—See J. A. 1881, s. 2 (n.).

"**L. C. J. of Common Pleas.**" "**L. C. B. of Exchequer.**"—See ss. 31, 32, and notes.

"**Divorce.**" "**Admiralty.**"—See J. A. 1881, s. 4; J. A. 1884, s. 3; J. A. 1891, s. 2, *post*.

"**Ordinary Judges,**" **&c.**—See J. A. 1875, s. 4; App. Jur. Act, 1876, s. 15.

"**May be appointed.**"—See App. Jur. Act, 1876, s. 18, J. A., 1877, s. 2, and (n.).

"**Shall be addressed.**"—See as to style, J. A. 1877, s. 4; J. A. 1881, s. 8, *post*. As to their rank, J. A. 1875, s. 6.

[The remaining unrepealed sections of this Part, except the 12th, which is printed *infra*, deal with vacancies by resignation and

Jud. Act, 1873, ss. 11—16.

otherwise of the judges (s. 7); their qualifications (s. 8), the saving of their rights and obligations as then existing (s. 11, amended by J. A. 1875, s. 8); the salaries of future judges, and their retiring pensions (ss. 13, 15).]

Provisions for extraordinary duties of judges of the former Courts.

12. If, in any case not expressly provided for by this Act, a liability to any duty, or any authority or power, not incident to the administration of justice in any Court, whose jurisdiction is transferred by this Act to the High Court, shall have been imposed or conferred by any statute, law, or custom, upon the judges or any judge of any of such Courts, save as hereinafter mentioned, every judge of the High Court shall be capable of performing and exercising, and shall be liable to perform and empowered to exercise every such duty, authority, and power, in the same manner as if this Act had not passed, and as if he had been duly appointed the successor of a judge liable to such duty, or possessing such authority or power, before the passing of this Act. Any such duty, authority, or power, imposed or conferred by any statute, law, or custom, in any such case as aforesaid, upon the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, or the Lord Chief Baron, shall continue to be performed and exercised by them respectively, and by their respective successors, in the same manner as if this Act had not passed.

Cross References.—Acts relating to former Courts, s. 76.

"**Not expressly provided for.**"—See s. 34.

"**Any Court whose Jurisdiction is transferred, &c.**"—Jurisdiction transferred, s. 16; not transferred, s. 17. Rules as to exercise of jurisdiction, s. 23, *infra*.

"**Any authority or power.**"—As to exercise by L. C. Justice of powers given to Chief Baron and Chief Justice of C. P., or either of them, see s. 32 (n.), *infra*; J. A. 1881, s. 25.

"**Lord Chancellor.**" "**Master of Rolls.**"—As to meaning to be now given to these words in Solicitors Act, see s. 76 (n.). As to the jurisdiction of the M. R. with regard to patents, see s. 16 (n.); and over solicitors, J. A. 1881, s. 24.

"**L. C. J. Common Pleas, &c.**"—See s. 32 (n.).

PART II.

Jurisdiction and Law.

Jurisdiction transferred to High Court.

16. The High Court shall be a Superior Court of Record, and, subject as in this Act mentioned, there shall be transferred to and vested in the High Court the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any of the Courts following; (that is to say),—

(1.) The High Court of Chancery, as a common law court as well as a court of equity, including the jurisdiction of the Master of the Rolls, as a judge or master of the Court of Chancery, and any jurisdiction exercised by him in

relation to the Court of Chancery as a common law court;

"**High Court of Chancery.**"—See (n.) "Jurisdiction of Chancery Division," s. 34.

"**The Master of the Rolls.**"—Cf. J. A. 1881, s. 2. As to the transfer of the jurisdiction of the M.R. under Solicitors Act, 1843, s. 37, cf. (n.) "When acting as judges," p. 391.

(2.) The Court of Queen's Bench;

(3.) The Court of Common Pleas at Westminster;

(4.) The Court of Exchequer, as a court of revenue, as well as a common law court;

"**Common Pleas.**" "**Exchequer.**"—See s. 32 (n.), *infra*.

(5.) The High Court of Admiralty;

Jurisdiction.—This Court is now a "Superior Court of equal jurisdiction with other branches of the High Court." (*The Receptа*, (1893) P. 255, 264.)

Prize Court.—See J. A. 1891, s. 4, *post*.

(6.) The Court of Probate;

As to non-contentious matter, see J. A. 1875, s. 18, *post*.

(7.) The Court for Divorce and Matrimonial Causes;

As to exemption of practice and procedure from R. S. C., O. 68, r. 1 (d).

(8.) The London Court of Bankruptcy;

London Court of Bankruptcy.—(See J. A. 1875, s. 9.) By Bank. Act, 1883, ss. 93, 94, and orders made thereunder, this Court is now united and consolidated with the Supreme Court, and its jurisdiction transferred to the High Court, Q. B. D. The equity administered in Bankruptcy is the same as that formerly exercised by the High Court of Chancery, and now by the Chancery Division. *Per* Rigby, L.J., *Re Hawkins*, (1895) 1 Q. B., p. 414.

(9.) The Court of Common Pleas at Lancaster;

(10.) The Court of Pleas at Durham;

(11.) The Courts created by Commissions of Assize, of Oyer and Terminer, and of Gaol Delivery, or any of such Commissions.

"**Commissions,**" &c.—See s. 29, *infra*.

The jurisdiction by this Act transferred to the High Court shall include (subject to the exceptions hereinafter contained) the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any one or more of the judges of the said courts respectively, sitting in court or chambers, or elsewhere, when acting as judges or a judge, in pursuance of any statute, law, or custom, and all powers given to any such court, or to any such judges or judge, by any statute; and also all ministerial powers, duties, and authorities, incident to any and every part of the jurisdictions so transferred.

Cross References.—Extraordinary powers of judges, s. 12. Jurisdiction *not* vested in High Court, s. 17. Appellate jurisdiction of H. Ct., ss. 45, 47; O. 59; J. A. 1884, s. 8. Jurisdiction to be exercised according to Rules, s. 23. Law and Equity to be administered concurrently, s. 24, ss. 1—6. Judges to take notice of all legal, customary, and statutory rights, s. 24, s.s. 6. Assignment of certain business to particular Divisions, ss. 34, 36. Power to

Jud. Act, 1873, s. 16.

retain, J. A. 1875, s. 11, s.s. 2. Power to transfer, s. 36, O. 49. Power of judge in Chambers or Court, s. 39. Powers of former judges exercisable by judges of H. C., s. 12, *supra*. Acts relating to former Courts, s. 76.

"Jurisdiction by this Act, &c."—See ss. 4, 5, *supra*; s. 24, *infra*. "It is clear that all the judges of the High Court have the same jurisdiction, and any judge may, if he choose, retain the action and exercise the jurisdiction" (*Pinney* v. *Hunt*, 6 C. D. 98; *Re Tharp*, 3 P. D., p. 81; *Hurst* v. *H.*, 21 C. D., p. 294; *Bradford* v. *Young*, 26 C. D. 656; *Dowdeswell* v. *D.*, 9 C. D., p. 303; *Salt* v. *Cooper*, 16 C. D. 548; *Re Goldsworthy*, 2 Q. B. D., p. 82; *Besant* v. *Wood*, 12 C. D. 605; *Re Pollard*, 20 Q. B. D. 656; *The Recepta*, (1893) P. 255): but he should not dismiss it (*Clanricarde* v. *Ryder*, (1898) 1 T. R. 98).

This Act effected a transfer to the High Court of the existing jurisdiction of the Court of Chancery and of the Common Law Courts; it did not *extend* the jurisdiction, see *Westbury on Severn, &c.* v. *Meredith*, 30 C. D. 387. (*Re Mills' Estate*, 34 C. D., p. 33.)

Assignment.—If an action is wrongly assigned to any division (see s. 34) the Court may either retain it or transfer it (see J. A. 1875, s. 11, s.s. 2, p. 465).

Exercise of Jurisdiction.—See s. 23, (n.) "As nearly as possible," p. 399: (n.) "Where no rule," &c., Additional Notes, p. 328; (n.) "The Court may retain," J. A. 1875, s. 11, s.s. 2, p. 465.

Queen's Bench Division.—As to assignment to Q. B. D. see s. 34, p. 426.

Regulation of Railways Act, 1868, *s.* 41.—The jurisdiction given by this Act to "a Judge of one of the Superior Courts of Common Law," &c., is transferred by this section (16) to the judges of the High Court, and may now be exercised by a master. (*Re Donisthorpe*, (1897) 1 Q. B. 671; s. 39, *infra*.)

Equitable Defences.—See s. 24, s.s. 2, *infra*.

Inquisition of Coroner.—This Division has power to quash. (*Reg.* v. *Directors G. W. R. Co.*, 20 Q. B. D. 410; *Reg.* v. *Clerk of Assize, &c.*, (1897) 1 Q. B., p. 373.)

Mandamus.—See O. 50, r. 6, (n.) "Mandamus"; and O. 53. The Q. B. D. has alone power to grant the *prerogative* writ of mandamus. *Per* Manisty, J., *Reg.* v. *Lambourn, &c., Ry. Co.*, 22 Q. B. D., p. 469.

Revenue.—Actions commenced in the County Court affecting the revenue were ordered to be removed into this Division. (*Churton* v. *Wilkin*, W. N. (84,) 62. Cf. O. 68, r. 1 (*c*).)

Chancery Division.—As to assignment to C. D., s. 34 and (n.), p. 425.

Costs as between Solicitor and Client.—See this note, J. A. 1890, s. 5, p. 512.

Lord Cairns's Act.—See (n.) "Damages in lieu of injunction," &c., O. 50, r. 6, Vol. I., p. 673.

Revocation of Probate.—The C. D. has no power to revoke the probate of a will. (*Priestman* v. *Thomas*, 9 P. D. 210; cf. *Bradford* v. *Young*, 26 C. D. 656; *Smart* v. *Tranter*, 40 C. D. 167; reversed on another point, 43 C. D. 587 (C. A.).)

Probate, Divorce and Admiralty Division.—Assignment to, s. 34, p. 427.

Construction.—After probate granted, it remains for the Court of Construction to determine the meaning and effect of the instrument, Jarman (1893), Vol. I., p. 29. In *Re the goods of Whalley*, W. N. (93), 62, the Court struck out a clerical error as to the number of a house made in the engrossment of the draft of a will, leaving it to the Court of Construction to fill up.

This Court should now, when it has all the parties and materials before it (see s. 24, s.s. 7), decide, where the will is made under a power, whether the power is sufficiently executed (*Phillips* v. *Jenkins*, 44 L. T. 281), and also, perhaps, other questions in controversy (*In the goods of Tharp*, 3 P. D. 82; Jarman, (1893)

Jud. Act, 1873, s. 16.

Vol. I., p. 31 ; *Re Lambert*, 39 C. D. 631) ; at any rate, in cases in which it has machinery for arriving at a proper conclusion. (*Harding* v. *Sutton*, 59 L. T. 838.)

Conversion.—This Division now recognises the equitable doctrine of conversion. (*The Goods of Gunn*, 9 P. D. 242 ; cf. s. 25 (11), *infra*.)

Injunction.—In Probate proceedings an injunction was granted. (*Nicholas* v. *Dracachis*, 1 P. D. 72.)

Jurisdiction in Non-contentious Matters.—The Judicature Acts do not alter the jurisdiction of the Court of Probate in non-contentious matters. (*Re Tomlinson*, 6 P. D. 209.) As to the Rules, cf. J. A. 1875, s. 18, p. 469, *post*.

Receiver.—This Division can appoint a receiver by way of equitable execution. (*Whitaker* v. *W.*, 7 P. D. 15.)

Divorce.—*Discovery.*—Interrogatories in a suit for nullity allowed. (*Harvey* v. *Lovekin*, 10 P. D., p. 127 ; and see *Redfern* v. *R.*, P. 139, and O. 68, r. 1 (*d*) : J. A. 1875, s. 18, *post*.)

Injunction.—Granted in *Noakes* v. *N.*, 4 P. D. 60 ; and see *Marshall* v. *M.*, 5 P. D. 19.

Admiralty.—As to jurisdiction in cases of collision, see *Mersey Docks, &c.* v. *Turner*, (1893) A. C. 468.

Campbell's Act (action under).—See *The Bernina*, 12 P. D. 58, 13 App. Cas. 1 ; *The Orwell*, 13 P. D. 80.

Interest on Damages in.—This will be given, following old practice (*The Gertrude*, 13 P. D. p. 109) ; see ss. 23, 76 (nn.).

Prize Court.—See J. A. 1891, s. 4, p. 515.

Generally.

Chancery of Lancaster.—This Court is not interfered with by these Acts. See J. A. 1873, ss. 77, 78, 95. As to appeals from the Palatine Court, see s. 18, s.s. 2 ; and O. 58, r. 1 (n.).

Compromise.—All the judges being of one Court, a judge of the Q. B. D. can order an agreement for compromise, made in the P. D. and A. Div., to be made a rule of Court in the Q. B. D. (*Smythe* v. *S.*, 18 Q. B. D. 544 ; and cf. *Priestman* v. *Thomas*, 9 P. D. 76, 210 ; *Graves* v. *G.*, 69 L. T. 420.)

Damages.—See (n.) "Damages in lieu of injunction," &c., O. 50, r. 6.

Infants, Custody, Maintenance, &c.—Every Division of the High Court has power to make orders for the custody, maintenance, and education of children until they attain the age of 21 years. (*Thomasset* v. *T.*, (1894) P. 295, overruling *Blandford* v. *B.*, (1892) P. 148.)

Injunction.—See *Beddow* v. *B.*, 9 C. D. 89, cited O. 50, r. 6 (n.).

Patents.—Cf. 15 & 16 Vict. c. 83, s. 38, and s. 17, s.s. 4, 6, *infra*.

Prohibition.—See this note, O. 68, r. 2.

Re-hearings.—See O. 58, r. 1 (n.).

Solicitors, Jurisdiction over.—See (n.) "When acting as judge," *infra*, also (n.) "Jurisdiction of Court over," Additional Notes, Pt. IV., p. 356.

Specific Performance.—See O. 50, r. 6 (n.), Vol. I., p. 673.

"**Subject to the Exceptions,**" **&c.**—See s. 17, *infra*.

"**When acting as Judges.**"—The jurisdiction given to the M. R. and L. C. as to ordering delivery by solicitors of bills for business not done in Court (6 & 7 Vict. c. 73, s. 37), was given to them *as judges* of the Court of Chancery, and was therefore transferred to High Court by this section. See *Re Pollard*, 20 Q. B. D. 656 (C. A.) ; cf. also s. 12, *supra* ; s. 76, *infra* ; J. A. 1881, s. 24.

Where a local Act enacted that certain disputes should be tried by an issue at law before a *Justice of Assize*, &c., the Court refused to hear an action commenced in the C. D. concerning such a matter. (*The Hanley, &c., Coal Co.* v. *The N. S. Ry. Co.*, 64 L. T. 6.)

Jud. Act, 1873, ss. 16—18.

Habeas Corpus.—Whether in awarding or refusing such a writ the Court is so acting, see judgment of Lord Bramwell, *Cox* v. *Hakes*, 18 App. Cas. p. 525.

"**In Pursuance of any Statute.**"—Acts relating to former Courts are to be read as applying to Courts under this Act, s. 76.

Jurisdiction not transferred to High Court.

17. There shall not be transferred to or vested in the High Court, by virtue of this Act,—

(1.) Any appellate jurisdiction of the Court of Appeal in Chancery, or of the same court sitting as a Court of Appeal in Bankruptcy:

Bankruptcy.—See s. 19, (n.) "Bankruptcy."

(2.) Any jurisdiction of the Court of Appeal in Chancery of the county palatine of Lancaster:

Chancery of Lancaster.—See this (n.), s. 18, s.s. 2.

(3.) Any jurisdiction usually vested in the Lord Chancellor or in the Lords Justices of Appeal in Chancery, or either of them, in relation to the custody of the persons and estates of idiots, lunatics, and persons of unsound mind:

Lunatics.—See as to appeals in lunacy, s. 18, s.s. 5; and as to lunatics and persons of unsound mind generally, O. 16, r. 17 (n.).

(4.) Any jurisdiction vested in the Lord Chancellor in relation to grants of letters patent, or the issue of commissions or other writings, to be passed under the great seal of the United Kingdom:

(5.) Any jurisdiction exercised by the Lord Chancellor in right of or on behalf of her Majesty as visitor of any college, or of any charitable or other foundation:

(6.) Any jurisdiction of the Master of the Rolls in relation to records in London or elsewhere in England.

Master of the Rolls.—See J. A. 1881, s. 2, *post*.

"**Records.**"—The M.R. had, under 15 & 16 Vict. c. 83, s. 8, sole jurisdiction in Chancery over the Register of Patent proprietors, but it passed under s. 16, *supra*, to the High Court. The jurisdiction to be retained by him hereunder is in relation to records the custody of which was given to him by 1 & 2 Vict. c. 94. (*Re Morgan's Patent*, 24 W. R. 245; *ante*, s. 16, s.s. 1; and *Re Myers' Patent*, W. N. (82) 53.) The M.R. has jurisdiction as Keeper of the Records to amend a clerical error in an engrossed specification filed in the Patent Office, notwithstanding s. 18 of The Patent, &c., Act, 1883. (*Re Johnson's Patent*, 5 C. D. 503; *Re Gare's Patent*, 26 C. D. 105.)

Jurisdiction transferred to Court of Appeal.

18. The Court of Appeal established by this Act shall be a Superior Court of Record, and there shall be transferred to and vested in such court all jurisdiction and powers of the courts following; (that is to say),—

Constitution of Court of Appeal.—Cf. s. 3, *supra*, (n.) "Court of Appeal"; J. A. 1875, ss. 4, 6; App. Jur. Act, 1876, s. 15; J. A. 1881, ss. 2, 3, 4; J. A. 1884, s. 3; J. A. 1891, s. 1. As to practice and procedure generally, O. 58, *infra*.

"**Established by this Act.**"—This Court of Appeal was intended to be a *final* Court of Appeal for English causes, and s. 20 provided that there was to be no appeal from the High Court or the C. A. to the House of Lords or Privy Council, but that

section and s. 22 were suspended by J. A. 1875, s. 2, and repealed by App. Jur. Act, 1876, s. 24.

Jurisdiction and Powers.—See as to its original jurisdiction, s. 4, *supra*; as to its appellate, s. 19, *infra*; O. 58, r. 4.

Jurisdiction not transferred.—The jurisdiction of the "Full Court of Divorce," as established by the Divorce Acts, is not transferred by this section, but by J. A. 1881, s. 9; see the (n.).

(1.) All jurisdiction and powers of the Lord Chancellor and of the Court of Appeal in Chancery, in the exercise of his and its appellate jurisdiction, and of the same court as a Court of Appeal in Bankruptcy:

Bankruptcy.—See (n.) "Bankruptcy," s. 19, p. 396.

(2.) All jurisdiction and powers of the Court of Appeal in Chancery of the county palatine of Lancaster, and all jurisdiction and powers of the Chancellor of the duchy and county palatine of Lancaster when sitting alone or apart from the Lords Justices of Appeal in Chancery as a judge of rehearing or appeal from decrees or orders of the Court of Chancery of the county palatine of Lancaster:

Chancery of Lancaster.—See the Chancery of Lancaster Act, 1890, s. 4; O. 58, r. 1, (n.) "Statutory, &c., Appeals."

(3.) All jurisdiction and powers of the Court of the Lord Warden of the Stannaries, assisted by his assessors, including all jurisdiction and powers of the said Lord Warden when sitting in his capacity of judge:

Stannaries.—By the Stannaries Court Abolition Act, 1896, and order thereunder, the Court of the Vice-Warden of the Stannaries is abolished, and its powers, &c., transferred to the County Courts in Cornwall.

(4.) All jurisdiction and powers of the Court of Exchequer Chamber:

See 31 G. 3, c. 12; 11 G. 4 & 1 Wm. 4, c. 70, s. 8; C. L. P. Act, 1852, ss. 146—167; C. L. P. Act, 1854, ss. 32—36.

(5.) All jurisdiction vested in or capable of being exercised by Her Majesty in Council, or the Judicial Committee of Her Majesty's Privy Council, upon appeal from any judgment or order of the High Court of Admiralty, or from any order in lunacy made by the Lord Chancellor, or any other person having jurisdiction in lunacy.

"H. M. in Council."—*Prize Court.*—By J. A. 1891, s. 4, s.s. 3, p. 515, any appeal from the High Court when acting as a Prize Court shall be only to H. M. in Council.

Jurisdiction in Lunacy.—See s. 17 (3), *supra*, and O. 16, r. 17 (n.).

"Any Order in Lunacy."—The Lunacy Act, 1890, s. 109, gives the judge in lunacy discretion as to costs of ascertaining whether a person is a lunatic. An appeal from the decision lies to the C. A. notwithstanding s. 49, *infra*. (*Re Cathcart*, (1893) 1 Ch. 466.)

Appeals from High Court.

19. The Court of Appeal shall have jurisdiction and power to hear and determine appeals from any judgment or order, save as hereinafter mentioned, of Her Majesty's High Court, or of any judges or judge thereof, subject to the provisions of this Act, and to such Rules and Orders of Court for regulating the terms

Jud. Act, 1873, s. 19.

and conditions on which such appeals shall be allowed, as may be made pursuant to this Act.

For all the purposes of and incidental to the hearing and determination of any appeal within its jurisdiction, and the amendment, execution, and enforcement of any judgment or order made on any such appeal, and for the purpose of every other authority expressly given to the Court of Appeal by this Act, the Court of Appeal shall have all the power, authority, and jurisdiction by this Act vested in the High Court of Justice.

Cross References.—Original jurisdiction, s. 4, and (n.); s. 18, *supra*; O. 58, r. 4 (n.). Combined jurisdiction, s. 19, *supra*; s. 24, *infra*, and sub-sections. Jurisdiction as to new trial motions, &c., see J. A. 1890, and as to hearing by two judges, J. A. 1899, *post*. Ordering new trial on an appeal, O. 58, r. 5. Enforcing right to a trial of issue, J. A. 1875, s. 22. How jurisdiction as to procedure and practice is to be exercised, s. 23. Orders in vacation, s. 52. Constitution of Court, ss. 3, 4, *supra*; J. A. 1875, s. 4; App. Jur. Act, 1876, ss. 15, 16; J. A. 1881, ss. 2, 3, 4; J. A. 1891, s. 1. Style of judges, J. A. 1877, s. 4. Three judges to hear final appeals, J. A. 1875, s. 12, and motions for new trial, J. A. 1890, s. 1, unless by consent, J. A. 1899, p. 524; and two for interlocutory, J. A. 1875, s. 12. No judge to sit on appeal from order made by him, J. A. 1875, s. 4. Appeals to House of Lords, App. Jur. Act, 1876, *post*.

Practice on Appeals.—See O. 58.

"**Jurisdiction and Power.**"—Although these words and the subsequent words in this section, "judgment or order," comprehend such a case as an appeal from a decision on the return of a writ of *habeas corpus*, yet if the result would be futile, or lead to an absurdity, the right way of dealing with these words is to put a limit on them, *e.g.*, "*shall have* jurisdiction to hear appeals "*from any judgment or order appealable, or where the C. A. or* "*the Court appealed from can execute the order or judgment of* "*the C. A.*" *Per* Lord Bramwell, *Cox* v. *Hakes*, 15 App. Cas., p. 526.

"**Any Judgment or Order of the High Court.**"—"A 'judgment' is a decision obtained in an action, and every other decision is an order." (*Onslow* v. *Commissioners I. R.*, 25 Q. B. D., p. 466 (C. A.).) Cf. s. 100, p. 456, *infra*.

An appeal must be given; and is not to be presumed. Perhaps something which may fill the character of a judgment or order, decree or rule, although not known by these names, may be subject to appeal as being practically within these words. *Per* Halsbury, C., *Ex p. County Council of Kent*, (1891) 1 Q. B. 725, and cf. judgment in *Cox* v. *Hakes*, *supra*.

Matters not appealable.

Matters not appealable in Court of Appeal.—See also (n.) "Save as hereinafter," &c., p. 398, *infra*.

Amount at Stake too Small.—See O. 1, (n.) "Value of Subject-Matter," Vol. I., p. 3.

Arbitration.—Special case under Arb. Act, 1889, s. 19. See Arb. Act, s. 19, (n.) "No appeal," p. 560, and (n.) "Consultative," &c., *infra*.

Certificates.—These, are not within the section. (*Haslam, &c., Co.* v. *Hall*, 20 Q. B. D., p. 493.)

Consultative Decision of High Court on question stated under Statute.—Certain Acts, *e.g.*, the Local Government Act, 1888, s. 29, and Arb. Act, 1889, s. 19, give power to submit certain questions "for decision" to H. C. Such applications are *consultative*, and no appeal lies. (*Ex p. County Council of Kent*, (1891) 1 Q. B. 725; *Jones* v. *Gracing Dock Co.*, 2 Q. B. D. 314; *Re Knight and Tabernacle P. B. Society*, (1892) 2 Q. B. 613; distinguished

Re Kirkleatham L. B. Arb., (1893) 1 Q. B. 375; and see (n.) "Special Case," and (n.) "Opinion," *infra*.) **Jud. Act, 1873, s. 19.**

Discretion of Judge.—As a general rule the C. A. does not interfere with the discretion of a judge, although when leave to appeal is not required, or has been given (cf. (n.) "Except by leave," s. 49, p. 438), it has jurisdiction to do so (*Golding* v. *Wharton, &c., Co.* 1 Q. B. D. 374; *Knowles* v. *Roberts*, 38 C. D., p. 271; *Mangan* v. *Metropolitan, &c., Co.*, (1891) 2 Ch. 551; and see this (n.), *infra*, p. 396). **Matters not appealable.**

Habeas Corpus.—An order *discharging* a person from custody, under a writ of. (*Cox* v. *Hakes*, 15 App. Cas. 506.) Cf. this (n.), pp. 396, 437.

Interpleader.—See O. 57, rr. 8 and 11.

Judgment without Trial.—Where a party does not appear at the trial, no appeal lies from judgment given in his absence. (*Walker* v. *Budden*, 5 Q. B. D. 267), and *semble*, the same principle applies to special case (*Allum* v. *Dickinson*, 9 Q. B. D. 632); but see *Re Grove*, 4 Times Rep. 272. The proper course seems to be to move to reinstate the case, not to appeal. (*Hunt* v. *Fineberg*, 5 Times Rep. 162; *Vint* v. *Hudspeth*, 29 C. D. 322.)

"*Opinion*" *of High Court.*—In some cases *judges of first instance* have been clothed by statute with the duty of forming an "opinion" on certain matters, as, for instance, with regard to the sufficiency of advertisements issued under 22 & 23 Vict. c. 35, s. 29; it is doubtful in such cases whether an appeal lies. (*Re Bracken*, 43 C. D. 1.) Where they have been, in fact, requested by the parties to act as arbitrators, there is no appeal from the decision (*Burgess* v. *Morton*, (1896) A. C. 136; *Bustros* v. *White*, 1 Q. B. D. 423).

Cf. (nn.) "Consultative," &c., *supra*: "Refusal to vary," &c., "Special Case," *infra*.

Order extending time for Appeal.—J. A. 1894, s. 1 (1) (a), p. 517.

Order refusing leave to Appeal.—See as to this s. 45, p. 433; (n.) "Unless special leave," and (n.) "Without leave," J. A. 1894, s. 1 (b), p. 517.

Orders Absolute for Dissolution or Nullity of Marriage.—No appeal in cases coming within J. A. 1881, s. 10.

Prize Court. High Court acting as.—The appeal lies to her Majesty in Council, not to C. A., J. A. 1891, s. 4, s.s. 3, p. 516.

Refusal to vary Minutes.—The C. A. will not interfere with the opinion of a judge as to drawing up minutes of his own judgment. (*James* v. *Jones*, 67 L. T. 584.)

Solicitors' Act, 1888, *s.* 13.—See O. 52, r. 24.

Special Case.—Where questions of fact only have been raised on a special case (*Burgess* v. *Morton*, (1896) A. C. 136.) See also (n.) "Special Case," p. 397, *infra*.

Statutory Appeal.—Where a statute gives a particular mode of appeal, *e.g.* Public Health Act, 1875, s. 268. (*Wake* v. *Mayor, &c.* 12 Q. B. D. 142; *Walthamstow L. B.* v. *Staines*, (1891) 2 Ch. 606.)

Stamp, Sufficiency of.—Decision of judge as to sufficiency of stamp, O. 39, r. 8, (n.).

Undertaking not to appeal.—See this (n.), O. 58, r. 1.

Appealable Matters.—The following matters are appealable:— **Appealable Matters.**

Admiralty.—An appeal lies to the C. A. from the High Court of Admiralty, s. 18, s.s. 5. But from inferior Courts of Admiralty the appeal is to a Divisional Court, O. 59, r. 4, and from a Div. Ct. to the C. A. by leave only, see s. 45, *infra*. As to appeals from Prize Courts, see J. A. 1891, s. 4, s.s. 3, p. 515.

Arbitration.—Award stated as special case, see Arbitration Act, 1889, s. 7, (n.) "Appeal," p. 543.

Jud. Act, 1873, s. 19.

Appealable Matters.

Attachment.—See s. 47, (n.) "Contempt of Court," p. 435.

Bankruptcy.—See s. 18 (1), *supra*. Appeal lies from H. Ct. to C. A. (Bankruptcy Act, 1883, s. 104 (b), *Ex p. Ashwin*, 25 Q. B. D. 271.) An appeal lies from Cty. Ct. to Div. Ct., and on leave from Div. Ct. to C. A., Bankruptcy Appeals (County Courts) Act, 1884.

B. Act, 1883, *s.* 21, *s.s.* 3.—An order under section 21 of the B. Act, 1883, is an "order" hereunder. (*Re Lamb*, (1894) 2 Q. B. 805.)

Certiorari.—From order of Queen's Bench Division discharging rule for. (*Reg.* v. *Pemberton*, 5 Q. B. D. 95.) See (nn.) "Rule Nisi," "Special Case," *infra*.

Contempt.—In certain cases, see s. 47, (n.) "Contempt of Court," p. 435.

Discretion of Judge.—An appeal lies from the exercise or non-exercise of the discretion of a judge when the C. A. clearly thinks that the judge has wrongly exercised his discretion and that injustice has been done, or that he has not exercised it or mistakenly exercised it. (*Jarmain* v. *Chatterton*, 20 C. D. 493; *Gardner* v. *Jay*, 29 C. D., p. 58: *Young* v. *Thomas*, (1892) 2 Ch. 134; *Bew* v. *B.*, W. N. (99), 396). But it will only interfere in exceptional circumstances. (*Re Cunningham*, 50 L. T. 246; *Ex p. Walker*, 22 Q. B. D. 384; *Re Martin*, 20 C. D. 365; *Re Wray*, 36 C. D. 138.) See (n.) "Discretion," p. 395, *supra*.

Divisional Courts.—When sitting as Courts of Appeal on leave only, when exercising original jurisdiction without leave, see s. 45 (n.), p. 431.

Divorce Act, Orders under.—See J. A. 1881, ss. 9, 10.

Durham Palatine Court.—See Palatine Court of Durham Act, 1889, s. 11.

Election Petitions.—J. A. 1881, s. 14, p. 494.

Error, Writ of.—See (n.) "Save for some error," &c., s. 47, p. 437.

Habeas Corpus.—See this (n.), *supra*, p. 395, and s. 47 (n.), p. 437. Whether, in awarding or disposing of a writ of *habeas corpus*, the High Court is acting as a Court or Judge of a Court of Judicature, see judgment of Lord Bramwell in *Cox* v. *Hakes*, 15 App. Cas., p. 525.

Appeal lies from a *refusal* to grant a writ, or order a discharge, see *Ex p. Bell-Cox*, 20 Q. B. D. 1; the note to *Reg.* v. *Jackson*, (1891) 1 Q. B. 671; *Dale's Case*, 6 Q. B. D. 376; *Cox* v. *Hakes*, *supra*. And, where the object of the writ is to determine who shall have the custody and control of an infant, from an order of the Q. B. D. directing a writ to issue to bring the infant before the Court. (*Reg.* v. *Barnardo*, *Jones's Case*, (1891) 1 Q. B. 194; *Barnardo* v. *M'Hugh*, (1891) A. C. 388; *Barnardo* v. *Ford* (*Gossage's Case*), (1892) A. C. 326; and see J. A. 1894, s. 1 (1) (b) (i), p. 518.)

Infants, Custody of.—See (n.) "Habeas corpus," *supra*, J. A. 1894, s. 1 (1) b (i), p. 518.

Inferior Courts.—See (n.) "County Courts," s. 45, *infra*; O. 59, r. 17.

Information by A.-G. for Penalties.—*A.-G.* v. *Bradlaugh*, 14 Q. B. D. 667.

Interlocutory judgments and orders.—Appealable with leave, and in six cases without leave. See J. A. 1894, s. 1 (1) (b), p. 517.

Lancaster, Palatine Court of.—See s. 18, s.s. 2, *supra*.

Leave to defend, Refusal of.—J. A. 1894, s. 1 (2), p. 518.

Liverpool Court of Passage.—By leave of the judge, direct to C. A., in all cases, interlocutory and otherwise. (*Hunter* v. *Jacobson*, 80 L. T. 641; *Anderson* v. *Dean*, (1894) 2 Q. B. 222.)

Lunacy.—See s. 18 (5) (n.), p. 393.

Mandamus.—See *Julius* v. *Bishop of Oxford*, 5 App. Cas. 214; *Reg.* v. *Holl*, 7 Q. B. D. 575; *Reg.* v. *Bishop of London*, 24 Q. B. D. 213, followed, *Reg.* v. *Bishop of London*, 7 Times Rep. 122. See s. 47 (n.), *infra*.

Jud. Act, 1873, s. 19.

Appealable Matters.

Mayor's Court.—See this (n.), s. 45, p. 433.

New Trial, Motions for, or to set aside Verdict.—See J. A. 1890, s. 1 (n.), p. 508, *infra*.

Nisi Prius.—From order of reference at, see s. 29, (n.) "Appeal," p. 424.

Orders.—Order includes rule, s. 100, p. 456. See (nn.) "Special Case," "Rule nisi," *infra*; "Judgment or order," *supra*, p. 394.

Order Settling Conveyance.—*Pollock* v. *Rabbits*. 21 C. D. 466.

Order under s. 115 of Coy. Act, 1862.—See as to appealing from such an order, or from an order to answer made thereunder, *North Australian, &c., Co.*, 45 C. D., p. 93.

Order under B. A. 1883, *s.* 21, *s.s.* 3.—*Re Lamb*. (1894) 2 Q. B. 805.

Probate.—See *Sugden* v. *St. Leonards*, 1 P. D. 154. From a refusal to grant administration. (*Re Clook*, 15 P. D. 132.)

Practice and Procedure.—See J. A. 1894. s. 1 (4), p. 518.

Prohibition.—From the decision of a Div. Ct. making absolute a rule for a prohibition. (*Barton* v. *Titchmarsh*, 49 L. J. Ex. 573.) And (without leave) from the decision of a Div. Ct. upon an application for a prohibition to a County Court (*Lister* v. *Wood*, 23 Q. B. D. 229); also from refusal of a judge of the Admiralty Division to grant writ of prohibition to Cty. Ct. ("*The Recepta*," (1893) P. 255.)

Quarter Sessions.—See (nn.) "Special Case," "Rule nisi," *supra*.

Railway and Canal Traffic Act, 1888.—Appeals from Commissioners under, see R. S. C. 10 April, 1889, W. N. (89), p. 189, Misc.

Registration and Election.—Leave required. see J. A. 1881, s. 14, p. 494.

Re-hearings.—See O. 58, r. 1. (n.) "Re-hearing."

Rule Nisi.—A decision of a Div. Ct., expressed in the form of a rule discharging a rule "nisi," is an "order" hereunder. (*Overseers, &c., of Walsall* v. *L. & N. W. Ry. Co.*, 4 App. Cas. 30; *Reg.* v. *Pemberton*, 5 Q. B. D. 95; *Corp. of Peterborough* v. *Overseers, &c.*, 12 Q. B. D. 1.)

Solicitor, Misconduct of.—See (n.) "Appeal," &c., Additional Notes, p. 360, and (n.) "Contempt of Court," s. 47, p. 435, *infra*.

Special Case.—See (n.) "Consultative decision," &c., p. 394. Case stated by umpire under L. C. C. Act, 1845 (*Bidder* v. *North Stafford R. C.*, 4 Q. B. D. 412); cases stated by Quarter Sessions, as to rates (*Overseers, &c., of Walsall* v. *L. & N. W. Ry. Co.*, 4 App. Cas. 40); under Highway Act (*Mayor of Over Darwen* v. *Justices*, 15 Q. B. D. 20; *Illingsworth* v. *Bulmer*, 32 W. R. 450); under s. 97 of Bankruptcy Act, 1883 (*Ex p. Dawes*, 17 Q. B. D. 275). A judgment on a special case under O. 34 (*Re Taylor*, 22 C. D. 495). Award by special case under Arb. Act, 1889, s. 7; J. A. 1894, s. 1 (b) (v), p. 518. See Arb. Act, 1889, ss. 7 and 19 (nn.), pp. 542, 559, *infra*.

Note that every case stated by a Court of Quarter Session, otherwise than under 11 & 12 Vict. c. 78, and 12 & 13 Vict. c. 45, for the consideration of the High Court is now to be *deemed to be an appeal* (see s. 45, *infra*), and is to be heard and determined accordingly, J. A. 1894, s. 2 (1), p. 520. The statute 11 & 12 Vict. c. 78, gives power to a judge, &c., at a trial to state a case for the opinion of the justices on a point of law. The statute 12 & 13 Vict. c. 45, is Baines's Act, and special cases thereunder for the opinion of the High Court are appealable without leave, for the decisions thereon are "orders" within this section, and not determinations of *appeals* within s. 45, *infra*. (*Corp. of Peterborough* v. *Overseers, &c.*, 12 Q. B. D. 1 (leave given); *Guardians of Holborn* v. *Guardians of Chertsey*, 15 Q. B. D. 76 (leave refused). Cf. *Ex p. County Co. of Kent, &c.*, (1891) 1 Q. B. 725.) And it makes no difference that

Jud. Act, 1873, ss. 19—23.

judgment has been entered by Quarter Sessions. (*Lodge* v *Mayor of Huddersfield*, (1898) 1 Q. B. 859.)

Cf. (nn.) "Consultative decision," p. 394, *supra*; "Opinion of High Court," *supra*, p. 395.

Appealable Matters.

Trial at Bar in Q. B. D.—See *A.-G.* v. *Bradlaugh*, 14 Q. B. D. 667, and s. 47, p. 436.

Verdict of Jury.—See J. A. 1890. (n.) "Principle on which," p. 509.

Workmen's Compensation Act, 1897.—See O. 58, r. 20.

"**Or of any Judges * * * thereof.**"

Chambers, Appeal from.—See s. 50, *infra*, (n.) "Appeal from Chambers," p. 439. Cf. J. A. 1894, s. 1 (4), p. 519.

Judge of Assize, Appeal from.—See s. 29, (n.) "Appeal," p. 424.

Judges of C. A., Appeal from.—When sitting as Div. Ct., see *Yarmouth* v. *France*, 4 Times Rep. 561; when sitting in lunacy, *Re Cathcart*, (1893) 1 Ch. 466.

Vacation Judge of C. A., Order of.—See *Boyd* v. *Bischoffscheim*, cited J. A. 1894, s. 1, p. 517, *infra*.

"**Save as hereinafter Mentioned.**"

By s. 45, p. 431, appeals from inferior Courts are to be determined by Div. Ct., and the determination of such appeals is final unless special leave is given to appeal to C. A.

By s. 47, p. 434, no appeals are to lie from any judgment of the High Ct. in any criminal cause or matter save for error of law on the record.

By s. 49, p. 437, orders made by consent, or as to costs, are not subject to appeal except by leave.

By s. 50, p. 438, no appeal is to lie from an order made in Chambers to set aside which no motion has been made, save by leave. Cf. the section and (n.) "Matters of Procedure and Practice."

By App. Jur. Act, 1876, s. 20, p. 483, where an Act of Parliament has provided that a decision is to be final, no appeal lies.

By J. A. 1881, s. 10, p. 493, no appeal from an order absolute for dissolution or nullity of marriage lies save as therein provided.

By J. A. 1881, s. 14, p. 494, the jurisdiction of the H. Ct. on questions of law in registration and election cases is final unless leave given.

By J. A. 1894, s. 1 (1) (a), p. 517, no appeal lies from an order extending time for appealing; (b) nor without leave of judges *or* C. A. from any interlocutory order, save as there excepted; (3) nor from an order giving unconditional leave to defend; (4) nor in matters of procedure or practice.

"**Subject to the Provisions of this Act.**"—These words apply only to the mode of procedure. (Brett, L.J., *Ormerod* v. *Todmorden Mill Co.*, 8 Q. B. D. 664; *Ex p. Bell-Cox*, 20 Q. B. D., p. 13.)

"**Rules and Orders.**"—As to appeals to C. A., see O. 58. As to motions for new trial, O. 39, rr. 1, 3.

"**For all the purposes of and incidental,**" **&c.**—Cf. s. 4, *supra*; O. 58, r. 4; and *Flower* v. *Lloyd*, 6 C. D., p. 300 (C. A.); *Cropper* v. *Smith*, 24 C. D. 305; *Brown* v. *Collins*, 25 C. D., p. 57, and the judgments of Lords Herschell and Field in *Cox* v. *Hakes*, 15 App. Cas., pp. 529, 545.

20 and **21.** [Taking away the right of appeal to the House of Lords and Judicial Committee were suspended by J. A. 1875, s. 2, and repealed by the Appellate Jurisdiction Act, 1876, s. 24, *post*.]

22. [Repealed S. L. Rev. (No. 2) Act, 1893.]

Rules as to exercise of jurisdiction.

23. The jurisdiction by this Act transferred to the High Court and the Court of Appeal respectively shall be exercised (so far as regards procedure and practice) in the manner provided by this

Act, or by such rules and orders of court as may be made pursuant to this Act; and where no special provision is contained in this Act or in any such rules or orders of court with reference thereto, it shall be exercised as nearly as may be in the same manner as the same might have been exercised by the respective courts from which such jurisdiction shall have been transferred, or by any of such courts.

Jud. Act, 1873, ss. 23. 24.

Cross References.—Acts of Parliament relating to former Courts. s. 76. *infra*; saving of old practice, J. A. 1875. s. 21; O. 72, r. 2.

"**The Jurisdiction.**"—See (n.) "Construction of Judicature Act and Rules," &c., Pt. IV., p. 327.

"**By this Act transferred to,**" **&c.**—See as to H. C., ss. 16, 17. As to C. A., ss. 18, 19.

"**By such Rules and Orders.**"—See as to making rules (nn.) "Rule Committee," "Publication of," &c.; J. A. 1881, s. 19, p. 496.

"**Where no special provision.**"—See *Re West Devon, &c., Co.*, 38 C. D. 51; cited (n.) "Construction of Judicature Act," &c., Additional Notes, Pt. IV., p. 327; and (n.) "Where no rule or variance," *ibid.*, p. 327; and *Re Morris*, 37 W. R. 317.

"**As nearly as may be in the same manner.**"—If an action properly assignable to one Division is brought in another, and no objection is made by the parties, and the judge retains it (see J. A. 1875. s. 11, s.s. 2), it must be determined in the same manner, as to damages, costs, or otherwise, as it would have been if properly assignable to the Division in which it was actually tried. (*The Gertrude*, 13 P. D. 105 (C. A.); *The Orwell*, 13 P. D., p. 81; *Andrews* v. *Barnes*, 39 C. D. 133.) But if the parties do not consent, or an Act of Parliament binds the Ct. (*The Orwell*, 13 P. D., p. 81), then it must be tried according to the principles of the Division to which it was properly assignable. (*The Gertrude*, 13 P. D. 105 (C. A.).) And see Additional Notes, Pt. IV., (n.) "Where no rule or variance," p. 327; and as to saving of old practice, J. A. 1875, s. 21; O. 72, r. 2.

24. In every civil cause or matter commenced in the High Court law and equity shall be administered by the High Court and the Court of Appeal respectively according to the rules following:

Law and equity to be concurrently administered.

This is the main section as to the combined jurisdiction. It provides for the administration, *by the Supreme Court*, of Law and Equity according to one system. See *Salt* v. *Cooper*, 16 C. D., p. 550; and cf. ss. 16 and 17, *ante*.

"**Shall be administered.**"—The rules of law declared by this Act (see s. 25, *infra*) are to receive effect in all courts whatsoever in England, so far as, &c., s. 91, *infra*.

County Courts.—See this (n.), s. 19, p. 451.

(1.) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which heretofore could only have been given by a Court of Equity, the said courts respectively, and every judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purpose properly instituted before the passing of this Act.

Equitable estate or right, &c., claimed by plaintiff.

Jud. Act. 1873, s. 24 (s.s. 1, 2).

See note to next sub-section.

"**Plaintiff or Petitioner.**"—See s. 100, *infra*.

"**Claims to be.**"—The claim may be by Reply, *e.g.*, concealed fraud and absence of means of discovery was replied to a Defence setting up Statute of Limitations. (*Gibbs* v. *Guild*, 9 Q. B. D. 59.)

"**Equitable Right.**"—See s.s. 4 (n.), and s. 25, s.s. 11 (n.).

As to equitable rights, &c., *appearing incidentally* in the course of a cause or matter, see s.s. 4.

Action to Recover Possession of Land.—If such an action is founded upon an equitable title, the person in whom the legal estate is vested must be a party. (*Allen* v. *Woods*, 68 L. T. 143.)

Equitable estate or right, &c., claimed by defendant.

(2.) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said courts respectively, and every judge thereof, shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in that court for the same or the like purpose before the passing of this Act.

"**Claims to be,**" **&c.**—See s.s. 4, and (n.) "Appearing incidentally," p. 402.

"**Equitable Defence.**"—As to equitable estates, titles, &c., see s.s. 4, 7, and 11 (nn.). As to the rules of equity prevailing in regard to stipulation in contracts as to time or otherwise, see s. 25, s.s. 7. Or where there is a conflict or variance, *ibid.* s.s. 11. As all the Courts have by this sub-section the power to give effect to equitable defences, it was no longer necessary to retain the old procedure by injunction, which was therefore abolished by s.s. 5; see that s.s. and (n.), p. 403. A defence of "no equity" and an equitable defence are different things, see *Emmerson* v. *Ind*, *infra*. If the dft. resorts to equity he must take the equitable principles applicable to the circumstances in their entirety. (*Steeds* v. *S.*, 22 Q. B. D., p. 541).

The High Court must entertain such equitable defence, and will endeavour to do complete justice in one action. See s.s. 7, and note. (Cf. *Eyre* v. *Hughes*, 2 C. D. 148; *Mostyn* v. *West Mostyn, &c., Co.*, 1 C. P. D. 145; *Breslauer* v. *Barwick*, 24 W. R. 901; *Storey* v. *Waddle*, 4 Q. B. D. 288; *Gathercole* v. *Smith*, 7 Q. B. D. 626.) See also (n.) "By way of defence," s.s. 5, p. 404; and cases cited O. 49, r. 3, (n.) "Grounds for directing transfer."

Recovery of Land.—As to pleading equitable defence in action for recovery of land, see O. 21, r. 21 (n.).

Ejectment by Crown. Equitable Defence.—In an action of ejectment by the Crown a defendant may set up any equitable defence which would have availed against a private plaintiff. (*A.-G. for Trinidad* v. *Bourne*, (1895) A. C. 83.)

Part Performance.—See this (n.), s.s. 7, p. 410.

Purchaser for Value without Notice.—"A defendant may set up by way of equitable defence in every division of the High Court, the defence that he is a purchaser for value without notice. The

plaintiff is thus, by a species of legislative side-wind, deprived of the means of enforcing rights which formerly 'a concessis' he had, and might enforce at law." White & Tudor, L. C., 7th ed. vol. ii. p. 157; the effect of a change of procedure *is*, therefore, in some cases, to alter rights, cf. *Emmerson* v. *Ind*, 12 App. Cas. 300.

Bond. Joint Obligees. Accord and Satisfaction.—Accord and satisfaction may now (see s. 25, s.s. 11) be a good plea to an action on a money bond. (*Steeds* v. *S.*, 22 Q. B. D. 537.)

Surety. Equitable Set-off of Debt due to Principal. See *Becher-vaise* v. *Lewis*, 7 C. P. 372 (1872).

(3.) The said courts respectively, and every judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said courts respectively, or any judge thereof, might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any rule of court or any order of the court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim, as if he had been duly sued in the ordinary way by such defendant.

Counterclaim and third parties.

Cross References.—Counterclaim, O. 19, r. 3. Third Parties, O. 16, r. 48.

"**Shall have Power to Grant.**"—These words are permissive not obligatory. (*Schneider* v. *Batt*, 8 Q. B. D. 701.) Compare s.s. 7, where these words are followed by the words "and shall grant."

"**Properly claimed by his pleading.**"—As to rights, &c., "appearing incidentally," see s.s. 4, compare s.s. 7.

"**Connected with the original,**" **&c.**—See *Barber* v. *Blaiberg*, 19 C. D. 473; *Hawkins, &c., Co.* v. *Mylrea*, 3 Times Rep. 91, and O. 19, r. 3, (n.) "What may be claimed by counterclaim," Vol. I., p. 283.

"**Duly Served with Notice.**"—See, as to third parties, O. 16, r. 48; and as to counterclaim, O. 19, r. 3 (n.), Vol. I., p. 234; O. 21, rr. 11, 12.

"**Shall, &c., be deemed a Party.**"—See (n.) "Party," s. 100, p. 455, and O. 16, r. 48, (n.) "Object of," Vol. I., p. 194.

"**With the same Rights.**" **&c.**—As to the meaning of these words, see *Lewin* v. *Trimming*, 21 Q. B. D., p. 235.

(4.) The said courts respectively, and every judge thereof, shall recognise and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in

Equitable rights appearing incidentally.

Jud. Act, 1873, s. 24 (s.s. 4, 5).

the same manner in which the Court of Chancery would have recognised and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this Act.

The provisions of this sub-section and of s.s. 7, do not confer new rights. (*Britain* v. *Rossiter*, 11 Q. B. D., p. 131, cited s.s. 7.)

"**Shall recognise.**"—This is imperative, and *semble*, "recognise" is equivalent to "give effect to." (*Williams* v. *Snowden*, W. N. (80) 124, *infra*.)

"**Equitable Estates, Titles, and Rights.**" — As to equitable Defences, see s.s. 2 (n.); as to rules of equity prevailing, see s. 25, s.s. 11, p. 419 (n.).

Bills of Sale. Equitable Rights and Legal Rights.—See *Holroyd* v. *Marshall*, 10 H. L. Cas. 191; *Morris* v. *De Lobbel-Flipo*, (1892) 2 Ch. 352.

Agreements for Leases.—See s. 25, s.s. 11, (n.) "Agreement for," &c., p. 420.

Interpleader.—*Engelbach* v. *Nixon*, L. R. 10 C. P. 645; *Jenkinson* v. *Brandley, &c., Co.*, 19 Q. B. D. 568; dissented from on another point, *Re Standard, &c., Co.*, (1891) 1 Ch. 627.)

Receiver. Equitable Execution.—See O. 50, r. 16, (n.) "Equitable execution," Vol. I., p. 678.

Covenant not to Alien or Assign in Lease.—Such a covenant was before this Act held not to be broken by a deposit of the lease as a security for a loan, but this section would seem to alter the law in this respect. (Woodfall, 13 ed., p. 660.)

Charging Order.—A charging order (O. 46), must still be enforced by a separate action in the C. D. (*Leggott* v. *Western*, 12 Q. B. D. 287), which may be by originating summons. (*Cohen* v. *Beadell*, 91 L. T. Jo. 250, O. 55, r. 5A; and see *Townend* v. *Brandenburg*, 39 Sol. Jo. 143, 151.)

Cooper v. *Griffin*, (1892) 1 Q. B. 740, and *Howard* v. *Sadler*, (1893) 1 Q. B. 1, show that the Q. B. D. can now give effect to all equitable rights as fully as C. D., and *Cragg* v. *Taylor*, L. R. 2 Ex. 131, which decided that shares standing in the name of a judgment debtor as trustee could be charged with his debt, is obsolete.

Equity to Settlement.—See this (n.), s. 25, s.s. 11, p. 420, *infra*.

Foreclosure.—As to giving full effect to equitable right of foreclosure, see *Heath* v. *Pugh*, 6 Q. B. D. 362, *per* Selborne, C., and 7 App. Cas. 237.

Part Performance. See this (n.), ss. 7, p. 410.

"**Equitable Duties and Liabilities.**"—See (n.) "Compromise," s.s. 5, p. 405, *infra;* (n.) "Undertaking not to Appeal," O. 58, r. 1, Vol. I., p. 807; O. 20, r. 6, (n.) "Relief," Vol. I., p. 272.

"**Appearing Incidentally.**"—An equitable right to specific performance appearing incidentally in the course of an action, and not claimed by counterclaim, was given effect to in *Williams* v. *Snowden*, W. N. (80) 124; *Furness* v. *Bond*, W. N. (88) 78; and see *Borrowes* v. *Delaney*, L. R. Ir. 24 Ex. D. 503, where a lease was rectified, although there was no counterclaim to rectify; and see *Breslauer* v. *Berwick*, 24 W. R. 901; *Howe* v. *Smith*, 27 C. D., p. 97; *Annesley* v. *A.*, 31 L. R. Ir. 457; *Scott* v. *Brown & Co.*, (1892) 2 Q. B. 724 (illegality of contract not pleaded), and (n.) "Incidental Relief," O. 20, r. 6.

"**In the same manner,**" &c.—The power of the Supreme Court to give relief is greater than that of the old Court of Chancery, as for instance in granting damages in specific performance actions, &c., cf. (n.) "Damages in lieu of injunction," &c., O. 50, r. 6, Vol. I., p. 673.

Prohibition. Injunction.

(5.) No cause or proceeding at any time pending in the High Court or before the Court of Appeal, shall be restrained

Jud. Act, 1873, s. 24 (s.s. 5).

by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this Act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: Provided always, that nothing in this Act contained shall disable either of the said courts from directing a stay of proceedings in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this Act had not passed, to apply to any court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said courts respectively, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally, or so far as may be necessary for the purposes of justice; and the court shall thereupon make such order as shall be just.

Cross References.—Determination of entire controversy, s.s. 7, *infra*; prohibition, O. 68, r. 2 (n.): injunction, see O. 50, r. 6 (n.). Stay of vexatious proceedings, O. 25, r. 4.

Object of Section.—The main object of the section is that one Division of the High Court shall not interfere with the other, and *that in conjunction with s.s.* 7 (which see), all matters of controversy shall be dealt with in one action, and before one Division. (*Wright* v. *Redgrave*, 11 C. D. 24; *Garbutt* v. *Fawcus*, 1 C. D. 155; J. A. 1875, s. 11 (1), p. 465.) The terms of this sub-section are absolute and without any exception. (James and Brett, L.JJ., in *Wright* v. *Redgrave*, *infra*; but see (n.) "Crown Prerogative," *infra*, p. 406.

"**No Cause or Proceeding * * shall,**" **&c.**—See judgment of Jessel, M.R., as to these words, in *Re Artistic Colour, &c., Co.*, 14 C. D., p. 505.

"**Pending.**"—If an action is "pending," as to which see s.s. 7, *infra*, (n.) "Pending," you cannot restrain it, "but you can restrain a *person* from *instituting* proceedings." (M. R. in *Besant* v. *Wood*, 12 C. D., p. 630; *Cercle, &c., Co.* v. *Lavery*, 18 C. D. 555.) See also *Salt* v. *Cooper*, 16 C. D., p. 551; *Fordham* v. *Clagett*, 20 C. D., p. 653.

"**In the H. Ct. of Justice,**" **&c.**—An injunction may, and when convenient will, be granted to restrain proceedings pending in inferior Courts (*Hedley* v. *Bates*, 13 C. D. 498, explained by Jessel, M.R., in *Stannard* v. *St. Giles's Vestry, &c.*, 20 C. D., p. 196); or in tribunals constituted for a special purpose, or in tribunals of foreign country, see Kerr, Injunctions, 3rd ed., pp. 576, 577; *Armstrong* v. *A.*, (1892) P. 98; in *Jamieson* v. *J.*, 33 L. J., N. C. 38, the C. A. restrained respondents from prosecuting an appeal in Scotland until judgment in C. A.; and see as to Palatine Court, County Court, Bankruptcy Court, &c., (nn.) *infra*.

"**Every Matter of Equity.**"—See s.s. 2, *supra*, (n.) "Equitable Defence," p. 400; s.s. 4, (n.) "Equitable Estates," p. 402.

"**Unconditionally or on Terms.**"—The applicant for a stay of execution must clearly establish his equity to stay, or he must pay the money into Court (Joyce, Injunctions, (1872) 1287); and see *Kevers* v. *Mitchell*, W. N. (76) 53; *Dyke* v. *Stephens*, W. N. (85) 177; *Sanderson* v. *Consolidated, &c., Corp.*, 6 Times Rep. 404; Seton, Vol. I., p. 116, F. 4.

Jud. Act, 1873, s. 24 (s.s. 5).

"**By way of Defence.**"—This section (*inter alia*) substitutes—

(1) The pleading of an equitable Defence, see *Marshall* v. *M.*, 5 P. D., p. 20, and (n.) "Equitable Defence," s.s. 2, p. 400, *supra;* or

(2) A stay of proceedings: for the injunction which used to issue out of Chancery or Bankruptcy under the former practice; see Kerr, Injunctions, 3rd ed., p. 574; *Brooking* v. *Maudslay*, 38 C. D., p. 644, and cases cited (n.) "Object of," &c., *supra*.

Staying Proceedings.

"**Directing a Stay of Proceedings.**"

Under Inherent Jurisdiction.—This section reserves to all the Courts the old power of restraining vexatious or unreasonable proceedings. And its general jurisdiction to stay proceedings in proper cases is not limited by the R. S. C. See *Higgins* v. *Woodall*, 6 Times Rep. 1 (C. A.); and (n.), O. 25, r. 4, Vol. I., p. 319.

Abuse of Process of Court.—The Court has an *inherent* general jurisdiction to prevent an abuse of its procedure by staying or dismissing actions which it holds to be vexatious (*Dawkins* v. *Prince Edward*, 1 Q. B. D. 499; *Edmunds* v. *A.-G.*, 26 W. R. 550; *Metropolitan Bank* v. *Pooley*, 10 App. Cas. 210; and *London & Blackwall Ry. Co.* v. *Cross*, 31 C. D., at p. 371; *Blair* v. *Cordner*, 36 W. R. 64; *Lawrance* v. *Norreys*, 15 App. Cas., p. 219; *Haggard* v. *Pelicier Frères*, (1892) A. C., p. 68; *Kellaway* v. *Bury*, 66 L. T. 599; *Chaffers* v. *Goldsmid*, (1894) 1 Q. B. 186; *Boswell* v. *Coaks*, 6 R. 167; *Remmington* v. *Scoles*, (1897) 2 Ch. 1; *Stephenson* v. *Garnett*, (1898) 1 Q. B. 677); and although application is out of time. (*Beale* v. *Macgregor*, 2 Times Rep. 311; *Davey* v. *Bentinck*, (1893) 1 Q. B. 185.) So where an action must fail, as for instance an action of libel founded on communications relating to affairs of state between ministers, the Court has inherent jurisdiction to stop the action. (*Chatterton* v. *Sec. of State, &c.*, (1895) 2 Q. B. 189.) This jurisdiction was exercised by P. D. & A. Div. in *Willis* v. *Earl Beauchamp*, 11 P. D. 59. It is not limited to cases in which the facts are not in dispute. (*Lawrance* v. *Norreys*, 39 C. D. 213; 15 App. Cas. 210, a very strong case.) And there is jurisdiction to dismiss before the hearing. (*Bruce* v. *Aylesbury*, W. N. (92) p. 149.) See the form of order given in *Grepe* v. *Loam*, 37 C. D. 169; Seton, p. 344, where repeated frivolous applications had been made both to C. A. and other Courts, and see Vexatious Actions Act, *infra*, p. 527. A judicial discretion must be used as to what proceedings are vexatious, for the Court must not prevent a suitor from exercising his undoubted rights on any vague or indefinite principle. *Per* L.C. (*Higgins* v. *Woodhall*, 6 Times Rep. 1), and see *Boswell* v. *Coaks*, 6 R. 167.

Under the R. S. C.—Where partners suing out writ in name of firm fail to comply with demand of defendant for names and addresses of persons constituting firm (O. 48A, r. 2). Where a solicitor whose name is indorsed on a writ of summons shall declare that such writ was not issued by him (O. 7, r. 1). Pending decision of question of law (O. 34, r. 2). Pending payment of costs (O. 26, r. 4). Where pleadings show that action or defence is unreasonable, vexatious, or frivolous (O. 25, r. 4).

Generally as to Stay.

Application to Stay.—See (n.) "By motion," p. 408.

Effect of a Stay of Proceedings.—Two views may be taken: first, that it is a discontinuance, and therefore cannot be removed; secondly, that it is not equivalent to a discontinuance, but may be removed if proper grounds shown, see *Selig* v. *Lion*, (1891) 1 Q. B., p. 515; *Bennett* v. *Gamjee*, 2 Ex. D. 11; *Bean* v. *Flower*, 73 L. T. 371. And see (n.) "Stay by withdrawal of juror," p. 407. As to costs of preparing evidence pending a stay, cf. *Whitely Exerciser Co.* v. *Gamage*, (1898) 2 Ch. 405.

Removal of Stay.—See last note. Where an action was stayed and the right of action assigned, the assignee was held not entitled to have the stay removed, see *Selig* v. *Lion*, *supra*.

General Cases.—*Arbitration.—Agreement to refer.*—See Arb. Act, 1889, s. 4, p. 534.

Jud. Act, 1873, s. 24 (s.s. 5).

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Action by Mortgagee in C. P. D.—Administration in C. D.—Wrongful Stay.—See *Crowle* v. *Russell*, 4 C. P. D. 136.

Appeal.—Stay Pending.—See O. 58, rr. 16 and 17 (nn.).

Bankruptcy.—Neither the judge of the London Bankruptcy Court nor a Cty. Ct. judge sitting in bankruptcy has now power to restrain an action in the High Court. (*Ex p. Reynolds*, 15 Q. B. D. 169; cf. *Ex p. Harper*, 4 Times Rep. 65.) As to its power to stay, see B. A. 83, s. 10, Williams B. P. 5th ed., p. 46. As to staying proceedings on bankruptcy of plaintiff, &c., see O. 17, r. 4, (n.) "Bankruptcy," Vol. I., p. 220. As to stay pending proceedings in bankruptcy, *Sharp* v. *McHenry*, 55 L. T. 749; *Farquharson* v. *Croker*, 7 Times Rep. 578.

Compromise.—Agreement to, may be enforced by stay. (*Eden* v. *Naish*, 7 C. D. 781; *Baker* v. *Blake*, 55 L. T. 723; *Henderson* v. *The Underwriting Association*, 65 L. T. 616, 732; *Guy* v. *Walker*, 8 Times Rep. 314; and (n.) "Compromise," Additional Notes, p. 326, *ante*.)

Concurrent Actions.—(Seton, vol. i., pp. 116, 700.) To discourage racing and prevent unnecessary costs being incurred, the general rule in administration actions is to allow the action in which judgment has been first obtained to proceed; to give the conduct of it to the plaintiff in the first action, and to stay that action; but special circumstances will vary the rule. (Cf. *Re Swire*, 21 C. D. 647; *Townsend* v. *T.*, 23 C. D. 100 (C. A.).) The costs of both actions will be left to be disposed of in action which is allowed to proceed. (*Re Swire*, *Townsend* v. *T.*, *supra*.) A second action will not be stayed unless the issues are the same as in the first. (*Adamson* v. *Tuff*, 44 L. T. 420; *Higgins* v. *Woodhall*, 6 Times Rep. 1.) As to transfer of one of the actions, *Re Stubbs*, 8 C. D. 144; O. 49.

Consolidation and Stay.—O. 49, r. 8 (n.), Vol. I., p. 657.

Where one action is a foreign action, the Court will act in one of three ways: (1) put the party suing to his election, *McHenry* v. *Lewis*, 22 C. D. 397; (2) stay suit in this country; (3) or in foreign country. (*The Christiansborg*, 10 P. D., at p. 153, distinguished in *The Mannheim*, (1897) P. 13.) It is *primâ facie* vexatious and oppressive to sue concurrently in two British Courts, but not necessarily so where one action is in a foreign Court. (*The Christiansborg*, 10 P. D., at p. 153; distinguished in *The Mannheim*, (1897) P. 13.) So where an action instituted in France involved the same parties and the same questions as an action instituted by one of the parties in England, but the relief sought in the French action could only be obtained in France, the latter was held not to be "vexatious," and an appeal against a stay was allowed. (*Baird* v. *Prescott*, 6 Times Rep. 231.) So where the course of procedure abroad is such as to give a litigant an advantage of which he has a right to avail himself. (*McHenry* v. *Lewis*, *supra*; *Peruvian Guano Co.* v. *Bockwoldt*, 23 C. D. 225; cf. *Gibbs* v. *La Société Industrielle, &c.*, 25 Q. B. D. 399; *Hyman* v. *Helm*, 24 C. D. 533; and cf. *Mutrie* v. *Binney*, 35 C. D. 614.) The principle applies not only to concurrent actions, but to cases in which an action is commenced in one country, and proceedings in that action of a similar kind are prosecuted in two countries. (*The Jasep*, 12 Times Rep. 375, 434, C. A.; *Armstrong* v. *A.*, (1892) P. 98; *Moore* v. *M.*, 12 Times Rep. 221.) As to concurrent actions in England and Ireland, or in England and India, see *Houstoun* v. *Sligo*, W. N. (84) 51; *Thornton* v. *T.*, 11 P. D. 176. As to concurrent actions in England and Scotland, see *The Indigo Co.* v. *Stewart*, 27 L. J., N. of C. 51; *Christian* v. *C.*, 78 L. T. 86; *Re Warrand*, 93 L. T. Jo. 82, where the dictum of Selborne, C., at the end of his judgment in *Ewing* v. *Orr-Ewing*, was dissented from.

Contempt.—Stay until contempt cleared. (*Bickford* v. *Skewes*, 10 Si. 193.).

Costs, Stay pending security for.—O. 65, r. 6, (n.) "Order."

Costs, Stay pending payment of.—See O. 65, r. 1, (n.) "Interlocutory Costs." The principles as to staying proceedings for non-payment of costs are the same in C. D. and Q. B. D. There should be an application by summons for the purpose. And there must be something more than

Jud. Act, 1873, s. 24 (s.s. 5).

Staying Proceedings.

mere non-payment of costs of an interlocutory motion to entitle the Court to stay the action. *e.g.*, vexatious or oppressive proceedings, as in *Hendre* v. *Gerner*, 32 Sol. Jo. 322; *Re Wickham*, 38 C. D. 272 (C. A.), followed in *Graham* v. *Sutton*, (1897) 2 Ch. 367; cf. *Higgins* v. *Woodhall*, 6 Times R. 1. If the action is set down for trial pending such an application it should be marked "summons pending," and the trial should be ordered to stand over until the summons is disposed of.

Where default is made in payment of costs *of former suits*, proceedings may be stayed, although the plaintiff is not suing in the same character, if the action is in substance for the same matter. (*Martin* v. *E. Beauchamp*, 25 C. D. 12; *Peters* v. *Tilley*, 11 P. D. 149; *McCabe* v. *Bank of Ireland*, 14 App. Cas. 413; *Abdy* v. *A.*, 12 Times Rep. 524.) Where it is for a different matter, see *Hankin* v. *Turner*, 27 W. R. 232. *Semble*, the costs must have been taxed, *Ernest* v. *Partridge*, 8 L. T. 762; and see *Parker* v. *Simpson*, 18 W. R. 204. As to discontinued action, see O. 26, r. 4, Vol. I., p. 323. Where repeated frivolous applications are made, and the costs ordered to be paid have not been paid, the Court will make an order preventing any further applications. (*Grepe* v. *Loam*, 37 C. D. 168; Seton, p. 344; Vexatious Actions Act, 1896, p. 527.)

Counterclaim.—May be stayed. (*Spartali* v. *Hoorn*, W. N. (84) 32.) In *Delobbel-Flipo* v. *Varty*, (1893) 1 Q. B. 663, the action was stayed except as to counterclaim. See O. 21, r. 16.

County Court. Administration.—A county court before which an administration suit is pending has no power to stay proceedings in the High Court in respect of claims provable in the administration suit. (*Cobbold* v. *Pryke*, 4 Ex. D. 315.)

Creditors' and Legatees' Action for Administration.—If a creditor has commenced an action for administration and his claim is then satisfied, legatees cannot avail themselves thereof, but must commence a fresh action and the creditor's action will be stayed. (*Re Ainsworth*, W. N. (95) 153.)

Cross Actions in respect of same subject-matter.—See *Thomson* v. *S. E. R. Co.*, 9 Q. B. D. 320; *Rees* v. *Luxmoore*, 4 Times R. 355.

Crown Prerogative.—This sub-section does not apply to the prerogative rights of the Crown, so the A.-G. may apply to restrain an action in the C. D. touching such rights. (*A.-G.* v. *Constable*, 4 Ex. D. 172.)

Damages, Stay pending Security for.—*Richards* v. *Howell*, W. N. (83) 159, 168.

Discovery, Stay of, pending Appeal.—In *Emmerson* v. *Ind*, 55 L. J. Ch. 903, discovery was stayed on terms pending appeal. Where the plaintiff is a nominal plaintiff the action may be stayed until the real plaintiff gives discovery, *Willis* v. *Baddely*, (1892) 2 Q. B. 324.

Infants, &c., in Actions by.—Where an action is instituted in the name of an infant, if it appear that such action is not for the infant's benefit it will be stayed. (*Anderton* v. *Yates*, 5 De G. & S. 202; and see *Gray* v. *Paull*, 25 W. R. 874; Seton, vol. ii., p. 822.) As to persons of unsound mind, *Waterhouse* v. *Worsnop*, 59 L. T. 140; and O. 16, r. 17 (n.).

Judgments, staying Proceedings under.—Where the taking of the account under a foreclosure decree would clearly produce only vexation and expense, the security being insufficient, the action will be stayed. (*Taylor* v. *Mostyn* (C. A.), 25 C. D., p. 54; *Exchange, &c., Co.* v. *Association of Financiers*, 34 C. D. 195.) Inquiries may also be stayed. (*Beale* v. *Ruston*, W. N. (78) 179.) An administration action was stayed until probate obtained by the plaintiffs' executors. (*Tarn* v. *Commercial, &c., Co.*, 12 Q. B. D. 294.) In *Hendre* v. *Gerner*, 32 Sol. Jo. 322, oppressive proceedings under a judgment were stayed; and see *Beale* v. *Macgregor*, 2 Times Rep. 311. There is power, in a proper case (cf. *Blake* v. *Harvey*, 29 C. D. 287), to stay proceedings under an existing order, and to substitute for it, in effect, a different order. (*Re Stevens*, 34 Sol. Jo. 603.) In *Jersey* v. *Uxbridge Rural Sanitary Authority*,

Jud. Act, 1873, s. 24 (s.s. 5).

Staying Proceedings.

(1891) 3 Ch. 183, all proceedings under a writ of elegit and inquisition were stayed hereunder.

Oppressive or Unreasonable Litigation.—May be stayed. (*Graham* v. *Sutton*, (1897) 2 Ch., p. 369; following *Re Wickham*, 35 C. D. 272 (C. A.).)

Palatine Court of Lancaster.—In *Dyke* v. *Stephens* (2), W. N. (85) 177, on motion by infant plaintiff the C. D. restrained, on terms, an action in the Palatine Court to which he was not a party. As to the power of this Court to restrain actions in other Courts, it is submitted that notwithstanding the remarks of the M. R. in *Re Alison*, 8 C. D., at p. 9 (differently reported in 26 W. R. 452), this power still exists; this section having no application to the Palatine Court. See Lan. Chy. Practice, 1885, pp. 3—5, and cf. *Ex p. Ditton*, 1 C. D. 557.

Partial Stay.—Under the modern practice an action can be partially stayed. *Morton* v. *Quick*, 26 W. R. 441, and see (nn.) "Discovery," "Counterclaim," *supra*.

Parties, Stay pending adding of.—*Jackson* v. *Kruger*, 52 L. T. 962.

Patent Actions.—Where there is an action to restrain threats under Patent, &c., Act, 1883, s. 32, the defendant is not bound to assert his rights by defence or counterclaim, but may bring a separate action for infringement; he should, however, attempt to stay proceedings in the other action on terms. (*Combined Weighing, &c., Co.* v. *Automatic, &c., Co.*, 42 C. D. 665.)

Probate Court.—A judge of the P. D. & A. Div. has no power to restrain or stay proceedings in the C. D. (*Martin* v. *Toleman*, 77 L. T. 138.)

Proceedings commenced without authority.—Where actions are commenced or defended without authority, see (n.) "Where solicitor acts," &c., Pt. IV., p. 370.

Receiver.—Any application touching his conduct should be made to the Court appointing him. (*Searle* v. *Choat*, 25 C. D. 723.)

Res Judicata.—The limitations of this defence are stated with great clearness by Willes, J., in *Langmead* v. *Maple*, 18 C. B. N. S., p. 270; and see *Barrs* v. *Jackson*, 1 Y. & C. C. C. 585; referred to by Collins, L.J., in *Stephenson* v. *Garnett*, (1898) 1 Q. B., p. 682. In *Warwick* v. *East*, W. N. (89) 80, where it appeared from statement of claim that there was an existing order staying a former suit for same matter, the action was stayed hereunder, unless plaintiff elected to amend by seeking to set aside such order in a more definite way than he had done by his statement of claim. See (n.), O. 25, r. 4, Vol. I., p. 318.

Sheriff, Sale by.—The sheriff is an officer of the Court whose judgment he is executing, and any application touching him should be made to that Court. (*Re Artistic Colour, &c., Co.*, 14 C. D., p. 503; *Wright* v. *Redgrave*, 11 C. D. 24.)

Stay against some Defendants.—A purchaser brought an action against vendor and auctioneers, alleging fraudulent sale; the C. A. reversing an order of the M. R. staying the action against the auctioneers, held that it was the right of the plaintiffs to have the auctioneers kept before the Court until such time as the plaintiffs had obtained from them all that could be obtained by continuing the suit. (*Heatley* v. *Newton*, 19 C. D., p. 336.)

Stay, by withdrawal of Juror.—Such a withdrawal is only a determination of the action in the sense that, unless something special happens, the Court will hold the parties to their undertaking, and will stay any further proceedings. (*Thomas* v. *Exeter, &c., Co.*, 18 Q. B. D., p. 825.)

Stay instead of Transfer.—See *Ladd* v. *Puleston*, 31 W. R. 539; *Bethall* v. *United Stock Exchange*, W. N. (86) 10, and O. 49, r. 1.

Submission of Defendant to Plaintiff's Claim.—If defendant submits to plaintiff's demand, the action will be stayed, perhaps, without costs. (*Rudd* v. *Rowe*, 10 Eq. 610; Seton, F. 3, p. 116.)

Test Actions.—As to staying other actions until "test" action is tried, cf. *Amos* v. *Chadwick*, 4 C. D. 869; 9 *ibid.* 459; *Ladywell, &c., Co.* v. *Huggons*, W. N. (85) 55; *Colledge* v. *Pike*, 56 L. T. 124.

Jud. Act, 1873, s. 24 (s.s. 5, 6.).

Third Party. Judgment against, after Stay.—An action was stayed on payment into Court by defendant. Judgment was afterwards given against a third party under O. 16, r. 52. (*Gloucestershire, &c., Co.* v. *Phillips*, 12 Q. B. D. 533.)

Staying Proceedings.

Two Actions instead of One.—Cf. *McCabe* v. *G. N. R. of Ireland*, (1899) 2 I. R. 123. If two actions are commenced, the second asking for relief which might have been obtained in first, the second is vexatious and may be stayed. (*Poulett* v. *Hill*, (1893) 1 Ch. 277.)

Winding-up. Companies Act, 1862, *ss.* 85. 87, 163.—All applications to stay during pendency of a winding-up petition, or during liquidation proceedings, are to be made to the Division in which the action or proceeding to be restrained is attached (*Re Artistic, &c., Co.*, 14 C. D. 502; *Re Queensland, &c., Co.*, 58 L. T. 878; *Re South of France, &c., Co.*, 25 W. R. 870; *Graham* v. *Edge*, 20 Q. B. D. 538, 683; cf. J. A. 1875. s. 11, s.s. 1); and notwithstanding the Companies (Winding-up) Act, 1890 (*General Service, &c., Stores*, (1891) 1 Ch. 496). So in voluntary liquidation (*Rose* v. *Gardden Co.*, 3 Q. B. D. 235; *Freeman* v. *General, &c., Co.*, (1894) 2 Q. B. 380; *Westbury* v. *Twigg & Co.*, (1892) 1 Q. B. 77; *Harrison* v. *Mortgage, &c., Co.*, 10 Times Rep. 141); and proceedings on judgment will be stayed in liquidation under supervision order. (*Re Shingleton Ice Co.*, 31 Sol. Jo. 705.) Cf. (n.) "By Motion," &c., *infra*.

Orders to stay are generally made absolute in first instance and on "*ex parte*" application (*Masbach* v. *Anderson*, 26 W. R. 100), but on terms (*Everingham* v. *Co-operative, &c., Co.*, W. N. (80) 99, C. A.); and as to costs, see J. A. 1890, s. 5 (n.), p. 511.

Winding-up Order.—It is the practice not to rescind such an order, but to stay proceedings under it. *Re Baxters*, 33 L. J. N. C. 334.

Stay of trial of issues of Fact pending appeal on Law.—This will not be allowed without strong reasons. (*Re Palmer's Application*, 22 C. D. 88.)

"**Any Person . . . whether a Party or not.**"—*Semble*, a person not a party to an action who desires to stay judgment may intervene hereunder, cf. (n.) "Intervention by persons not parties," O. 16, r. 11, Vol. I., p. 159, and *Dyke* v. *Stephens*, W. N. (85) 177.

Applicant not dominus litis.—Where the applicant is a plaintiff who is *quasi*-trustee for plaintiffs in other actions, the action will not be stayed at his request. (*Robinson* v. *Chadwick*, 7 C. D. 878.)

"**By Motion in a Summary Way.**"—D. C. F. p. 845. Application to stay an action, or touching any proceedings therein, must be made in the Court in which the action is pending. *Re Artistic, &c., Co.*, 14 C. D. p. 505; *Wright* v. *Redgrave*, 11 C. D. p. 32. The words of the section give the applicant liberty to make his application by motion, and it may be questioned whether when application to stay is made in lieu of the old injunction there is any jurisdiction on summons; see this (n.) in former editions. In practice applications to stay seem to be made indiscriminately either on motion or summons, and see O. 30, rr. 4 and 5.

Probably several actions in same Division would be stayed on one application. (*Re People's Gardens Co.*, 1 C. D., p. 46; *O'Malley* v. *Steele*, 26 Ir. L. T. 304.) It should not be "*ex parte*" except on emergency (*Blewitt* v. *Dowling*, W. N. (75) 202; *Kevers* v. *Mitchell*, W. N. (76) 53); but see as to matters in liquidation, (n.) "Winding-up," *supra*.

Legal, customary, and statutory rights to be recognised.

(6.) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said courts respectively, and every judge thereof, shall recognise and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the common law or by any custom, or

created by any statute, in the same manner as the same would have been recognised and given effect to if this Act had not passed by any of the courts whose jurisdiction is hereby transferred to the High Court. **Jud. Act, 1873, s. 24 (s.s. 6, 7).**

As to the meaning of this section and s. 7, see *Re Tharp*, *infra*, s.s. 7, (n.) "Exercise of the jurisdiction."

"**Equitable Rights.**"—See s.s. 1, 2, 3, 4, and 5, *supra*.

"**Other Express Provisions.**"—See amendments of the law, s. 25, *infra*. As to rules of equity prevailing, see *ibid.*, s.s. 11 (n.).

"**Shall give Effect.**"—Cf. (n.) "As nearly as may be," s. 23, *supra*, p. 399; (n.) "Where no rule," &c., Additional Notes, Pt. IV., p. 328.

(7.) The High Court and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this Act in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided. Final determination of matters in controversy.

Cross References.—Equitable claims and rights, s.s. 1, 2, 4. Legal claims, &c., s.s. 6. Setting up equitable defence, s.s. 5. Variance between law and equity, s. 25, s.s. 11, *infra*. Declaratory judgment, O. 25, r. 5.

Jurisdiction.—See (n.) "Object of Section," p. 403. "Whenever a subject of controversy arises in an action which can *conveniently* be determined between the parties to the action the Court should, if possible, determine it, so as to prevent further and needless litigation." *Per* Jessel, M.R., in *Re Tharp*, 3 P. D., p. 81; and see *Gathercole* v. *Smith*, 7 Q. B. D., p. 631; *Hedley* v. *Bates*, 13 C. D., p. 501; *Wright* v. *Redgrave*, 11 C. D., p. 32; *Hurst* v. *H.*, 21 C. D., p. 294; *Clanricarde* v. *Ryder*, (1898) 1 I. R. 98. It expresses the fundamental idea of the founders of the Judicature Act, namely, the avoidance of multiplicity of proceedings. See *McGowan* v. *Middleton*, 11 Q. B. D., p. 468; *Manchester, &c., Co.* v. *Brooks*, 2 Ex. D., p. 246.

"**Pending.**"—This means a cause, &c., in which some proceeding may still be taken. *Per* Jessel, M.R., *Fordham* v. *Clagett*, 20 C. D., p. 653. A cause is pending after final judgment if the judgment is not satisfied (*Salt* v. *Cooper*, 16 C. D. 551; *Hart* v. *H.*, 18 C. D. 670); but after foreclosure absolute, the action is at an end, and a receiver cannot be appointed. (*Wills* v. *Luff*, 38 C. D., p. 200.)

"**All such Remedies.**"—"Every remedy necessary for doing complete justice in an action in any division of the High Court is provided by this sub-section." *Per* Baggallay, L.J., *Serrao* v. *Noel*, 15 Q. B. D. 549.

"**Every legal or equitable claim.**"—Since this Act the Courts must decide *according to all the rights, legal or equitable*, of the parties interested. See judgment of Collins, J., *Cooper* v. *Griffin*, (1892) 1 Q. B., p. 747; *Re Ingham*, (1893) 1 Ch., p. 361.

Specific Performance. Rectification.—The Court will now rectify

Jud. Act, 1873, ss. 24, 25.

an agreement and order specific performance in the same action. (*Olley* v. *Fisher*, 34 C. D., p. 369; *The Shrewsbury & Talbot Cab, &c., Co.* v. *Shaw*, 89 L. T. Jo. 274.)

Partition.—The Court will now decide disputed questions of title in a partition action, *Waite* v. *Bingley*, 21 C. D., p. 681, and Seton, (1893) p. 1551.

Part Performance.—The equitable doctrine as to part performance taking the contract out of the Statute of Limitations is confined to land and is not extended by this sub-section. (*Britain* v. *Rossiter*, 11 Q. B. D. 123—131; cf. *Lavery* v. *Pursell*, 39 C. D., p. 518.)

Charging Order.—A separate action to enforce such an order by sale is still necessary, cf. O. 46, r. 1, Vol. I., p. 624, (n.) "Sale"; also (n.) "In his own right," *ibid.*, p. 621.

Purchaser for Value, &c.—See this note, s. 24, s.s. 2; s. 25, s.s. 11.

Delivery up of Title Deeds.—See *Cooper* v. *Vesey*, cited s. 25, s.s. 11 (n.); *Re Ingham*, (1893) 1 Ch., p. 361.

Declaration of Title.—Cf. O. 25, r. 5 (n).

"**Properly brought forward.**"—Even *if not claimed*, the Courts are to take notice of equitable rights. See s.s. 4, and (n.) *supra*.

A probate suit is commenced by writ, a legitimacy declaration suit by petition; therefore in an action for probate the writ cannot claim a declaration of legitimacy. (*Warter* v. *W.*, 15 P. D. 36.)

"**All matters so in controversy.**"—Cf. judgment of Bramwell, L.J., *In the goods of Tharp*, 3 P. D., p. 88.

"**Multiplicity of Legal Proceedings Avoided.**"—See (n.) "Jurisdiction," *supra*; and as to consolidating causes and matters, O. 49, r. 8, Vol. I., p. 657.

"The whole tenor of the Jud. Acts is to require all proceedings as far as possible to be taken in one action." *Per* Cotton, L.J., in *Searle* v. *Choat*, 25 C. D., p. 727. But it is not, perhaps, always possible to avoid a separate proceeding. Cf. *Re Tillett*, 32 C. D. 639; *Re Thorpe*, (1891) 2 Ch. 360.

Compromise.—Enforced in a winding up. (*Re Gaudet, &c.*, 12 C. D. 882.) And see Additional Notes, Pt. IV., p. 326.

Cross Actions.—See this (n.), s.s. 5, p. 406.

Originating Summons.—When on summons taken out under O. 55, r. 10, there is only a question of law to be determined, it ought to be decided without putting the parties to the expense of another proceeding. (*Re Powers*, 30 C. D., p. 296.)

Power.—If Court of Probate decides there is a power, it should go on to decide whether or not it is well granted. (*Re Tharp*, *infra*.)

Probate. Separate Estate.—Where the Court of Probate decided that a married woman was possessed of separate estate which would give her testamentary capacity, it might and (but for special circumstances) should have gone on to decide to what effects the probate extended. (*Re Tharp*, 3 P. D., p. 81; Jarman, (1893) Vol. I., p. 31.)

Receiver.—See this (n.), p. 407, and *Lane* v. *Capsey*, (1891) 3 Ch. 411; cf. *Martin* v. *Toleman*, 77 L. T. 138; *Re Toleman*, (1897) 1 Ch. 866.

Two Actions instead of One.—Action in C. D. for restitution of certain shares and claim for "other relief." Judgment was given for restitution of the shares. An action was then commenced in Q. B. D. for damages for detention of shares: held the former decree was a bar to relief, as damages might and ought to have been sought in the action in the C. D., *Serrao* v. *Noel*, 15 Q. B. D. 549; cf. *Dewar* v. *Winder*, 12 Times Rep. 54.

Rules of law upon certain points.

25. [The part of this section, relating to rules of law, was repealed by S. L. Rev. (No. 2) Act, 1893. See s. 91, *infra*.]

Jud. Act, 1873. s. 25 (s.s. 1—3).

(1.) [This sub-section, which dealt with the administration of assets of insolvent estates, but not of companies, was repealed by Judicature Act, 1875, s. 10, *post*, p. 459, which was itself in part repealed by S. L. Rev. (No. 2) Act, 1893.]

Statutes of Limitation inapplicable to express trusts.

(2.) No claim of a *cestui que trust* against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations.

"**For any Property.**"—Section 25 of 3 & 4 Will. IV. c. 27, relating to land or rent is extended to personal estate by virtue of this sub-section, Kay, J. (*Banner* v. *Berridge*, 18 C. D., p. 262.)

"**Express Trust.**"—As to what are "express trusts," see *Locking* v. *Parker*, L. R. 8 Ch. 30; *Mutlow* v. *Bigg*, 1 C. D. 385; *Re Bell*, 34 C. D. 462; *Dawkins* v. *Penrhyn*, 4 App. Cas. 51; *Re Alison*, 11 C. D. 284; *Petre* v. *P.*, 1 Drew. p. 393; *Patrick* v. *Simpson*, 24 Q. B. D. 128; *Soar* v. *Ashwell*, (1893) 2 Q. B. 390; *Rochefoucald* v. *Boustead*, (1897) 1 Ch., p. 208; *Re Somerset*, (1894) 1 Ch. 231; *Thorne* v. *Heard*, (1895) A. C. 495; *Tucker* v. *T.*, (1894) 1 Ch. 724, 3 Ch. 429; *Price* v. *Phillips*, 11 Times Rep. 86. See also the Real Property Limitation Act (37 & 38 Vict. c. 57, ss. 8, 25), and *Re Jane Davis*, (1891) 3 Ch. 119; *Re Parker*, (1892) 2 Ch. 491. Section 10 of the same Act enacts that from 1st January, 1879, no money or legacy charged on any land or rent shall, though secured by an *express trust*, be recoverable, except within the time within which it might have been recovered had there been no express trust. As to an executor being an express trustee for next of kin, cf. *Re Lacy*, (1899) 2 Ch. pp. 158, 160.

The above sub-section (2) applies as between trustee and *cestui que trust*, whilst the 37 & 38 Vict. applies as between the *land* charged (though secured by way of trust) and the persons entitled to the charge. (*Fearnside* v. *Flint*, 22 C. D. 579; *Hughes* v. *Coles*, 27 C. D. 231; Lewin, (1891) p. 1008.)

"**Shall be held to be barred.**"—By the Trustee Act, 1888, s. 8, which is not repealed by the Trustee Act, 1893, it is provided that all rights and privileges conferred by any Statute of Limitation shall be enjoyed by *trustees express or implied*, except in cases of fraud, retainer or conversion, &c., but this section applies only to actions commenced after January, 1890. (*Re Sharpe*, (1892) 1 Ch., p. 166.) Its effect is that except in the three cases of fraud mentioned in the Act, a trustee who has committed a breach of trust is entitled to the protection of the Statutes of Limitation as if actions for breaches of trust were enumerated therein. (*How* v. *Winterton*, (1896) 2 Ch. 626; *Rochefoucald* v. *Boustead*, (1897) 1 Ch., p. 208. Cf. *Re Bowden*, 45 C. D., p. 450; *Moore* v. *Knight*, (1891) 1 Ch. 547; *Re Davis*, (1891) 3 Ch. 119; *Re Swain*, (1891) 3 Ch. 233; *Jago* v. *J.*, 68 L. T. 655; *Re Barker*, (1892) 2 Ch. 491; *Re Page*, (1893) 1 Ch. 304; *Re Gurney*, (1893) 1 Ch. 590; *Re Somerset*, (1894) 1 Ch. 231; *Re Lands, &c., Co.*, (1894) 1 Ch. 616: Lewin, (1891) p. 1009; *Mara* v. *Browne*, (1896) 1 Ch. 199; *Thorne* v. *Heard*, (1895) A. C., p. 506; *Robinson* v. *Harkin*, (1896) 2 Ch. 415.) As to costs payable to trustees, although statute-barred, see *Budgett* v. *B.*, (1895) 1 Ch. 202. As to the exceptions to s. 8, see *Thorne* v. *Heard*, (1895) A. C. 495; *Wassell* v. *Leggatt*, (1896) 1 Ch., p. 558. See the Judicial Trustees Act, 1896, p. 602, *post*.

Equitable waste.

(3.) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description

Jud. Act, 1873, s. 25 (s.s. 3, 4).

known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate.

Waste.—A tenant for life without impeachment of waste, a tenant in tail after possibility of issue extinct, and a tenant in fee, with an executory devise over in case of death without issue, had at law a right to cut down all timber, ornamental or otherwise, but Courts of Equity interfered to prevent such persons from committing what was called "equitable waste," *e.g.*, felling timber planted or left standing for shelter or ornament, or doing injurious acts to mansion-house. (*Micklethwaite* v. *M.*, 1 De G. & J. 504; *Baker* v. *Sebright*, 13 C. D. 179; Brett's Leading Cases, (1891) p. 84; *Bowles' Case*, 11 Co. 79 b; *Garth* v. *Cotton*, W. & T. L. C., 7th. ed. vol. ii.; Seton, p. 471; Vaizey, Settlements, 166.) At law the timber or minerals severed by a tenant unimpeachable for waste became his property. Equity then seized on his conscience and defeated the legal right. But this section takes away the legal right; consequently there seems to be no ground for the interposition of equity. But as the timber or minerals must vest in some one, possibly the owner of the first estate of inheritance may be held entitled. See Bewes on Waste, p. 198.

Cases.—The estate of a legal tenant for life is not liable for permissive waste. (*Re Cartwright*, 41 C. D. 532.) Where a tenant for life not impeachable for waste, cut ornamental timber which was injuring other ornamental timber, he was allowed to retain the proceeds, but if before cutting the reversioner had applied to the Court, *semble*, an injunction would have been granted. (*Baker* v. *Sebright*, 13 C. D. 179; and see *Lowndes* v. *Norton*, 6 C. D. 139; *Batthyany* v. *Walford*, 33 C. D. 624; *Dashwood* v. *Magniac*, *infra*.) As to the right of an equitable tenant for life to cut timber, upon a "timber estate," cf. *Dashwood* v. *Magniac*, (1891) 3 Ch. 306. To obtain an injunction against waste the plaintiff must prove damage to the inheritance. (*Meux* v. *Cobley*, (1892) 2 Ch. 253.) As to "ameliorating waste," see *Ibid.*

Semble, this sub-section is retrospective, *per* Chitty, J., *Dibb* v. *Walker*, (1893) 2 Ch. 429.

Merger.

(4.) There shall not, after the commencement of this Act, be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity.

"**Merger.**"—Merger is the absorption of the lesser estate or estates in the greater, where two or more estates in the same property meet in the same person in the same right, see *Re Radcliffe*, (1892) 1 Ch. 227, without any such estate between them as will prevent them from coalescing. (Smith, R. & P. Prop., 1044; Wharton, Lex. 604; Lewin, (1891) p. 819.) Mergers are odious in equity (Wms. Exors. 6th ed., p. 608), but only if misapplied so as to do injustice, *per* Lindley, L.J., *Re Radcliffe*, (1892) 1 Ch., p. 232.

"**By operation of Law only.**"—Cf. *Snow* v. *Boycott*, (1892) 3 Ch. 110.

"**Of any Estate.**"—The merger of charges, unlike the legal doctrine of merger of estates, is founded upon certain well-defined principles of equity, and (?) is not affected by this section, see *Thorne* v. *Cann*, (1895) A. C. 18; *Re Godley*, (1896) 1 I. R. 45.

Cases.—Where a lessor, being himself tenant for years, grants to his sub-lessee the residue of his interest from the termination of the existing sub-lease, the existing sub-lease does not merge. (*Hyde* v. *Warden*, 3 Ex. D. 72.)

The general rule is that where one of the interests is held in "autre

droit" no merger takes place in equity; nor, in the absence of special circumstances, at law. (*Chambers* v. *Kingham*, 10 C. D. 743.) **Jud. Act, 1873, s. 25 (s.s. 4—6).**

Extinguishment of Proviso in Lease by Merger.—*Dynevor* v. *Tennant*, 13 App. Cas. 279.

Tenant for Life and Reversioner.—See *Re Radcliffe*, (1892) 1 Ch. 227; *Re The Barry R. Co.*, 76 L. T. 489.

(5.) A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person. Suits for possession of land by mortgagors.

Before the Act.—Before the passing of the above Act the mortgagor being no longer the owner of the reversion, could not sue the tenant in ejectment; he might, however, always distrain for the rent, in the name and as the bailiff of the mortgagee, under an implied authority from him to enforce payment of the fund out of which his interest may be paid. And even though he distrained as for rent due to himself, he might justify as the bailiff of the mortgagee. The like authority is implied in favour of the owner of the equity of redemption, who has paid off the mortgage, on an undertaking for a transfer of the security. (Fisher's Mort. 440, *Walsh* v. *Lonsdale*, 21 C. D. 9.)

Mortgagor in possession.—A mortgagor in possession is treated in equity as owner of the mortgaged property for most purposes, and he may exercise all ordinary acts of ownership. But if a mortgagee takes possession, he is not bound by any lease or tenancy created by the mortgagor, unless under a power expressly reserved to the latter for that purpose. (See *Corbett* v. *Plowden*, 25 C. D. 678; *Yorkshire B. Coy.* v. *Mullan*, 35 C. D., p. 127; and Fisher, 442; and see Conveyancing Act, 1881, s. 18; *Dundas* v. *Vavasseur*, 99 L. T. Jo. 310.) A legal mortgage determines a tenancy at will. (*Jarman* v. *Hale*, (1899) 1 Q. B. 994.)

Privity between Mortgagor and Mortgagee.—None can be presumed as to leases subsequent to mortgage. (*Corbett* v. *Plowden, &c., supra.*) See Conveyancing Act, 1881, s. 18; *Wilson* v. *Queen's Club*, (1891) 3 Ch. 522.

"**Entitled, &c., to the Possession of the Rents.**"—These words will not be taken literally, but the Court will look at the whole facts of the case. (*Bennett* v. *Hughes*, 2 Times Rep. 715.)

"**No Notice of his Intention.**"—If a tenant of the mortgagor's having received notice from mortgagee to pay the rent to him, remains in possession, that does not raise an inference that he has assented to become tenant to mortgagee. (*Towerson* v. *Jackson*, (1891) 2 Q. B. 484, overruling *Underhay* v. *Read*, 20 Q. B. D. 209.)

"**May Sue.**"—*Injunction.*—A mortgagor, no notice having been given by the mortgagee of his intention to take possession, can maintain an action for an injunction to restrain defendant from committing a breach of covenant injuriously affecting the mortgaged premises, without joining the mortgagee. (*Fairclough* v. *Marshall*, 4 Ex. D. 37.)

(6.) Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express Assignment of debts and choses in action.

Jud. Act, 1873, s. 25 (s.s. 6).

notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be, and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed), to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the High Court under and in conformity with the provisions of the Acts for the relief of trustees.

Cross References.—As to recognition in all Courts of equitable rights see s. 24. s.s. 4; as to conflict, &c., between rules of equity and law, s.s. 11, *infra*. Counterclaim, O. 19, r. 3, Vol. I., p. 234. Set-off, O. 19, r. 3, Vol. I., p. 234.

Generally.—Formerly no possibility, right, title, nor thing in action could be granted or assigned to strangers, at law. (*Lampet's Case*, 10 Coke, 47.) But in process of time certain choses in action became assignable even at law, either by custom as bills of exchange, or by statute. Cf. notes to *Ryall* v. *Rowles*, 1 White & Tudor, L. C. (1897), p. 102, and *Durham* v. *Robertson*, (1898) 1 Q. B. 765. This sub-section transfers the debt or other legal chose in action to the assignee, and he can sue for it *in his own name*, but he must prove the assignment. (*Read* v. *Brown*, 22 Q. B. D., p. 132; and cf. *Schroeder* v. *Central Bank, &c.*, 34 L. T. 735; *Dibb* v. *Walker*, (1893) 2 Ch. 429, (n.) "All legal," &c., p. 416.) The sub-section is retrospective. (*Dibb* v. *Walker*, (1893) 2 Ch. 429.)

"Any Absolute Assignment."—*Moneys on Deposit.*—See *Re Sutton's Trusts*, 12 C. D., p. 177; *Southwell* v. *Scotter*, 49 L. J. Q. B. 356.)

Mortgage of Debts, &c.—A mortgage of debts due to the mortgagor made in the ordinary form, with proviso for redemption and re-assignment, of which express notice in writing is given to the debtor, is an *absolute* assignment within this section. (*Durham* v. *Robertson*, (1898) 1 Q. B. 765, following *Tancred* v. *Delagoa Bay, &c., Co.*, 23 Q. B. D. 239: and see *Ibberson* v. *Nech*, 2 Times Rep. 427, and (nn.) "Charge," &c., *infra*. "Future debts," p. 415.

Assignment by Assignee.—As to the effect of an assignment, followed by subsequent assignment to another party who sues on it, see *Cronk* v. *M'Manus*, 8 Times Rep. 449.

Assignments on Trust.—Held, absolute. See *Comfort* v. *Betts*, (1891) 1 Q. B. 737, followed in *Wiesener* v. *Rackow*, 76 L. T. 448; *Walker* v. *Bradford Old Bank*, 12 Q. B. D. 511.

Assignment "pro tanto."—See *Mercantile Bank, &c.* v. *Evans*, 15 Times Rep. 535.—C. A.

Conditional Assignment.—Cf. *Durham* v. *Robertson*, *supra*.

Charge. Equitable Mortgage.—Cf. *Re Kelcey*, W. N., (99) 133.

Cheque.—Is not an absolute assignment. (*Schroeder* v. *Central Bank, &c.*, 24 W. R. 710: *Bence* v. *Shearman*, (1898) 2 Ch. 582.

Consideration.—If the assignment is complete, this question does not arise, see *Harding* v. *H.*, 17 Q. B. D., pp. 445, 446.

Jud. Act, 1873, s. 25 (s.s. 6).

"**By writing under the Hand of the Assignor.**"—The S. of Claim must expressly allege this. Blake-Odgers on Pleading (1894), p. 63. Cf. *Re Richardson*, 30 C. D., p. 397.

In cases of assignment of legal choses in action not governed by this section, the assignor should be a party, an indemnity being tendered him. (*Turquand* v. *Fearon*, 4 Q. B. D. 280; and cf. *Goodman* v. *Robinson*, 18 Q. B. D. 332; but see *Sanders* v. *Peek*, 32 W. R. 462.)

"**Of any Debt or other Legal Chose in Action.**"—As to the definition of a "chose in action," 1 Spence Eq. Jur. 852; and cf. *Colonial Bank* v. *Whinney*, 11 App. Cas., p. 429. It includes all rights the assignment of which a Court of Law or Equity would before the Act have considered lawful. (*King* v. *Victoria Insurance Co.*, (1896) A. C., p. 254.) Whether an assignment of part of a debt is within section, *quære*, see *Durham* v. *Robertson*, *supra*.

Agreement to subscribe, and to pay after being called on.—*Semble*, such an agreement may constitute a legal chose in action. (*The Mercantile Bank of London* v. *Evans*, 15 Times Rep. 83; *ibid.*, 535, C. A.)

Balance of Account.—In *Harding* v. *H.*, 17 Q. B. D. 442, the trustees of a will sent to the residuary legatee, G., an account showing a balance due to him. He (G.) sent this to H., writing thereon, "I hereby instruct the trustees in power to pay to my daughter H. the balance shown in the above statement." Notice was given of this by H. to the trustees. Held, a good assignment of the balance at law and in equity.

Balances at Bankers.—These are within the sub-section. See *Walker* v. *Bradford Bank*, 12 Q. B. D. 516.

Bankruptcy.—See this (n.), p. 417, and (n.) "Future debts," &c., *infra*.

Bill of Costs.—*Assignee.*—R., a solicitor, assigned his bill of costs due to him by defendant to the plaintiff. The bill was not signed by R., but was delivered by plaintiff. Held plaintiff was an assignee within Solicitors Act, 1843, s. 37, and could sue. (*Ingle* v. *M'Cutchan*, 12 Q. B. D. 518; and see *Ibberson* v. *Nesk*, 2 Times Rep. 427.) As to the meaning of the term "assignee" under that section, see *Penley* v. *Anstruther*, 52 L. J. Ch. 367.

Book Debts, &c.—"*Order and Disposition.*"—Book debts can only be taken out of the "order and disposition" of the creditor who assigns them by notice to debtors, see *Tailby* v. *Official Receiver*, 13 App. Cas. 534. Cf. *Re Seaman*, (1896) 1 Q. B. 412; *Re Goetz*, (1898) 1 Q. B., p. 794.

Building Agreement—Assignment of.—See this (n.), p. 416.

Loan—Further Advances.—A contract to lend money or to make further advances creates no "debt," nor does it constitute a "chose in action." (*May* v. *Lane*, 64 L. J. Q. B. 236.) See (n.) "Damages," p. 417.

Contract, Assigned—Breach—Damages.—See (n.) "Damages," p. 417.

Debt—Judgment Debt, Assignee of.—See *Goodman* v. *Robinson*, 18 Q. B. D. 332; cf. (n.) "All legal," &c., *infra*, p. 416.

Debt, Certified as Due, in Winding up.—See *Re The Moss Bay, &c., Co.*, 8 Times Rep. 63, 475.

Debts, Future, &c.—G. agreed to build a vessel for B. at a price payable by instalments. G. was in debt to P., and by writing directed B. to pay P. 100*l.* *out of moneys due or to become due* to him G. Notice in writing of this charge was at once given to B. At the time of giving the order all instalments due had been paid by B., but more than 100*l.* would be due from B. to G. on the contract. B. declined to be bound by the order of G., and subsequently paid him sums amounting to more than 100*l.* Held that there had been a valid assignment of 100*l.* to P. by G., and that P. was entitled to recover that sum from B. (*Brice* v. *Bannister*, 3 Q. B. D. 569; distinguished in *Western Waggon Co.* v. *West*, (1892) 1 Ch. 271, and explained in *Ex p. Nichols*, *infra*; and in *Durham* v. *Robertson*, (1898) 1 Q. B. p. 773. See

Jud. Act, 1873, s. 25 (s.s. 6).

also *Ex p. Hall*, 10 C. D. 615; *Buck* v. *Robson*, 3 Q. B. D. 686; *Webb* v. *Smith*, 30 C. D. 192; *Drew* v. *Josolyne*, 18 Q. B. D. 590; *Walker* v. *Bradford Bank*, 12 Q. B. D. 511; *Tailby* v. *Official Receiver*, 13 App. Cas. 523; *Re Coleman*, 39 C. D. 443; *Re Turcan*, 40 C. D. 7; *Mercantile Bank of London* v. *Evans*, 15 Times Rep. 83, 535, C. A., and cf. (n.) "Book Debts, &c.," *supra*. In *Knill* v. *Prowse*, 33 W. R. 163, an assignment of future rent until further order was held good; cf. *Durham* v. *Robertson*, *supra*.)

In *Wilmot* v. *Alton*, (1897) 1 Q. B. 17 (C. A.), a trader assigned for value payments which were to become due under a contract. Before they became due the trader was bankrupt. Held the trustee was entitled. Cf. also *Ex p. Nichols*, 22 C. D. 782. (*Re Beall*, (1899) 1 Q. B. 688.)

Stamp Duty on Assignment.—Where a writing is an assignment of a debt, and not an order for the payment of money, it may be put in evidence on payment of duty and penalty; and see as to this, *Buck* v. *Robson*, 3 Q. B. D. 686; *Brice* v. *Bannister*, 3 Q. B. D. 569; *Fisher* v. *Calvert*, 27 W. R. 301; *Webb* v. *Smith*, 30 C. D. 192; Alpe, Stamp Duties, 1894, p. 77.

"**Express Notice in Writing.**"—This may be given after the death of the assignor. (*Walker* v. *Bradford Bank*, 12 Q. B. D. 511; see *Dibb* v. *Walker*, (1893) 2 C. D. 429.) Notice is not necessary to make an assignment perfect *in equity* as between the assignor and assignee. (*Newman* v. *N.*, 28 C. D., p. 678; *Gorringe* v. *Irwell*, 34 C. D. 128 (C. A.); *Re Patrick*, (1891) 1 Ch. 82; *Re Griffin*, (1899) 1 Ch. 408.) But, *semble*, the *legal right* remains in the assignor until notice is given, see *Lee* v. *Magrath*, 10 L. R. Ir. 319; *Harding* v. *H.*, 17 Q. B. D., p. 445; Godefroi on Trusts (1891), p. 73; *Ellison* v. *E.*, White & Tudor, L. C. (1897), vol. ii., p. 842. Notice should be alleged. If the notice is wrongly dated it is invalid. *Stanley* v. *English Fibres, &c.*, 68 L. J. Q. B. 839.

Failure to give notice.—Cf. *Hudson* v. *Fernyhough*, 61 L. T. 722.

Priority of Notice.—As to the effect of priority of notice on prior charges on debt assigned, see *English & Scottish, &c., Investment Co.* v. *Brunton*, (1892) 2 Q. B. 1, 701 (C. A.).

Negotiable Instrument given for Debt.—Notice given to a debtor by a creditor who has received a negotiable instrument from the debtor for his debt, that he has assigned the debt, may, even if the creditor retains the instrument, be disregarded. (*Bence* v. *Shearman*, (1898) 2 Ch. 582 (C. A.).)

"**Shall be and be deemed to have been effectual.**"—These words make the section retrospective. (*Dibb* v. *Walker*, (1893) 2 Ch. 429.)

"**Subject to all Equities,**" **&c.**—The asignee of a debt takes subject to all equities which the debtor could have raised against the assignor. (See Lewin (1891), p. 781; *Ryall* v. *Rowles*, 1 White & Tudor, L. C. (1897), p. 132; *Young* v. *Kitchin*, 3 Ex. D. 127; approved in *Government of Newfoundland* v. *Newfoundland Ry. Co.*, 13 App. Cas. 199; *Roxburghe* v. *Cox*, 17 C. D. 520; *Re Moss Bay Hematite, &c., Co.*, 8 Times R. 475; *Christie* v. *Taunton, &c., Co.*, (1893) 2 Ch. 175; *Re Jones*, (1897) 2 Ch., pp. 203, 204; and see *Biggerstaff* v. *Rowatt's Wharf*, (1896) 2 Ch., p. 101.)

"**The Legal Right.**"—The section transfers the legal right to the debt, as well as the legal remedies for its recovery. (*Read* v. *Brown*, 22 Q. B. D. 128.) See (n.) "All legal," &c., *infra*.

Building Agreement, Assignment of.—Bill of Sale.—As to an assignment of a building contract and plant requiring registration, see *Church* v. *Sage*, 41 W. R. 175; cf. (n.) "Damages," *infra*.

"**All Legal and other Remedies.**"—The assignee of a judgment debt may institute garnishee proceedings under O. 45, r. 1; and he is entitled to avail himself of the other remedies given by Orders

Jud. Act, 1873, s. 25 (s.s. 6, 7).

42, 43, 44, and 45. (*Goodman* v. *Robinson*, 18 Q. B. D. 332.) He may therefore apply for a committal on a judgment summons under the Debtors Act, 1869, s. 5; but he must comply with any provision contained in the County Court Rules for such a case, and he must therefore apply for leave to issue execution under County Court Rules, 1889, O. 25, r. 9A. See (n.) "Bankruptcy," *infra*.

If an insurer pays the insurance to the insured, and takes an assignment from him of all his rights, the assignee may sue in his own name, which he could not do by mere force of subrogation. (*King* v. *Victoria Insurance Co.*, (1896) A. C. 250.)

Bankruptcy.—A petitioning creditor in Bankruptcy must, notwithstanding this section and s. 6 of the Bankruptcy Act, 1869, be legal and equitable owner of the debt. (*Ex p. Culley*, 9 C. D. 307; *Re Milan, &c., Co.*, 22 C. D., p. 127; but cf. *Re Palmer*, (1898) 1 Q. B. 419.) Cf. (n.) "Future debts," p. 415.

Copyright.—The assignee of, under 5 & 6 Vict. c. 45, must be registered. (*Liverpool, &c., Asson.* v. *Commercial Press, &c.*, (1897) 2 Q. B. 1.)

Damages.—P. assigned the benefit of a contract to make a loan to W. The contract was broken. W. sued for damages. Held, that W. could only so sue in right of P. (*Western Waggon, &c., Co.* v. *West*, (1892) 1 Ch. 277; *King* v. *Victoria, &c., Co.*, (1896) A. C. 250.) But in *Earls Shipbuilding Co.* v. *Atlantic, &c., Co.*, 43 Sol. Jo. 691, a counterclaim for damages for breach was allowed.

Lord Mayor's Court.—See *Read* v. *Brown*, 22 Q. B. D. 128.

Stay of Proceedings.—See *Selig* v. *Lion*, (1891) 1 Q. B., p. 513

"Such Debt."—Cf. *Re Sutton*, (n.) "Insurance Policy," *infra*

"To Interplead."—(O. 57.) See *Buck* v. *Robson*, 3 Q. B. D. 686. Before leave to interplead will be given it must be shown that there was sufficient notice of an absolute written assignment. (*Re New Hamburg, &c., Co.*, W. N. (75) 239.) If an action is pending the debtor may pay the money into Court under O. 57. r. 2; then a summons may be taken out under O. 57, r. 5, and the action stayed. But if separate proceedings be taken under this section, then the Court cannot stay the action. (*Reading* v. *School Board, &c.*, 16 Q. B. D. 686.)

"Pay the same into the H. Court," &c.—See *Reading* v. *School Board, &c.*, cited in last note.

Insurance Policy.—See *Re Haycock's Policy*, 1 C. D. 611. *Semble*, this section only applies where there has been an *absolute assignment by writing*. (*Re Sutton*, 12 C. D., p. 177: cf. *Re Kelcey*, W. N. (99) 133.) As to costs of payment where title disputed, *Re Carroll's Policy*, 29 L. R. Ir. 86.

Life Assurance Companies (Payment into Court) Act, 1896.—This Act, 59 Vict. c. 8, enables any Life Assurance Co. to pay into Court any moneys payable under a policy in respect of which, in the opinion of the directors, no sufficient discharge can otherwise be obtained. See O. 54 (C.)

Equitable Assignment for Value.—If the assignment, for want of notice, or otherwise, does not come within the provisions of the above sub-section, it may nevertheless be enforceable as an *equitable* assignment. See notes to *Ryall* v. *Rowles*, White & Tudor, L. C. (1897), Vol. I., p. 102, and the comments on *Brice* v. *Bannister*, in *Durham* v. *Robertson*, (1898) 1 Q. B., p. 773; *Re Griffin*, (1899) 1 Ch. 408; *Bence* v. *Shearman*, (1898) 2 Ch., p. 588.

Voluntary Assignment.—"The law as regards voluntary settlements is this: if the settlor transfers all the interest that he is in a position to transfer at the time, then it is effectual." (*Nanney* v. *Morgan*, 37 C. D., p. 352.) See notes to *Ellison* v. *E.*, White & Tudor, L. C. (1897), Vol. II., p. 842.

(7.) Stipulations in contracts, as to time or otherwise, which would not before the passing of this Act have been deemed to be or to have become of the essence of such

Stipulations not of the essence of contracts.

Jud. Act, 1873, s. 25 (s.s. 7—10).

contracts in a court of equity, shall receive in all courts the same construction and effect as they would have heretofore received in equity.

"**Stipulations** * * **as to Time or otherwise.**"—At law time was always of the essence of the contract, but in equity time is held to be of the essence of the contract only in cases of direct stipulation, or of necessary implication. (*Tilley* v. *Thomas*, L. R. 3 Ch. 61.) But this rule of equity only applied to purchases and sales of *land*, not to *mercantile* contracts. (*Reuter* v. *Sala*, 4 C. P. D., p. 249.) "If the parties choose, even arbitrarily, to stipulate for a particular thing to be done at a particular time, such a stipulation is effectual in equity as well as at law." (*Oakden* v. *Pike*, 34 L. J. Ch. 620; *Hatten* v. *Russell*, 38 C. D., p. 347.) Although time is not originally of the essence, yet subsequent "express notice will make time of the essence of the contract when a reasonable time is specified." (1888) Pollock on Contracts, pp. 415, 416; Dart V. & P. (1888), p. 487.

Having regard to the provisions of s. 24, s.s. 2, 4, and 7, and to s. 25, s.s. 11, *infra*, this s.s. would seem to be superfluous.

"**Passing of the Act.**"—See s. 2 (n.), p. 385.

"**Shall receive in all Courts.**"—That is superior or inferior, see Fry, Specific Performance (1892), p. 490. But see *Foster* v. *Reeves*, cited s. 91 (n.).

[Sub-section 8 as to mandamus injunctions and receivers is printed under O. 50, r. 6.]

Damages by collisions at sea.

(9.) In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault, the rules hitherto in force in the Court of Admiralty, so far as they have been at variance with the rules in force in the Courts of Common Law, shall prevail.

According to the rule of the Common Law, where both ships are to blame neither of them can recover anything. The rule of the Court of Admiralty is that where the owner of one ship sues the owner of another ship for damage by collision, if both ships be found to blame, the plaintiff is entitled to recover only one half of his damage; if there are cross-actions each owner recovers one half of his own loss. Thus each owner has to bear one half of the total loss sustained by both. (See Williams & Bruce's Ad. Pr., p. 72; Roscoe, Ad. Pr., p. 48; and *Chartered, &c., Bank* v. *Netherlands Co.*, 10 Q. B. D. 521 (C. A.); *Mills* v. *Armstrong*, 13 App. Cas. 1.)

"**The Rules.**"—See (n.) "The Rules of Equity," &c., p. 419.

"**At Variance,**" **&c.**—If there is no Admiralty rule applicable to a case (*e.g.*, to an action under Campbell's Act), then there can be no "variance" with the C. L., and this section does not apply. (*The Bernina*, 12 P. D., p. 95; 13 App. Cas. 1; *The Orwell*, 13 P. D. 80.)

Custody of infants.

(10.) In questions relating to the custody and education of infants the rules of equity shall prevail.

"**Custody and Education.**"—This section enables all Divisions of the H. C., even on *habeas corpus*, to regard something more than the strict rights of fathers and guardians, and requires all the Divisions to recognise the cardinal principle on which the Court of Chancery always proceeded, namely, that in dealing with infants

the primary consideration is their benefit. (*Thomasset* v. *T.*, (1894) P., p. 300. Cf. *Reg.* v. *Gyngall* (1893), 2 Q. B. 232.) As to the custody, &c., of infants, see Additional Notes, *supra*, p. 333, "Infants." **Jud. Act, 1873, s. 25 (s.s. 10, 11).**

Wardship of Infants and Care of their Estates.—This business is assigned to the Chancery Division, J. A. 1873, s. 34, s.s. 3; but the jurisdiction is concurrent with that of Courts of Law, see s. 16; and *Re Goldsworthy*, 2 Q. B. D. 75; *Re Ethel Brown*, 13 Q. B. D., p. 617.

"**The Rules of Equity shall prevail.**"—See this (n.), s.s. 11, *infra*.

(11.) Generally in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail. Conflict between law and equity.

Cross References.—As to equitable estates and claims, s. 24, s.s. 1 and 2, *supra*; as to Courts taking notice of equitable rights, s. 24, s.s. 4, *supra*; legal and equitable rights to be given effect to, s. 24, s.s. 6 and 7; stipulation in contracts as to time, &c., s. 7.

"**Particularly mentioned.**"—See, for instance, s. 25, s.s. 3, 4, 7, *supra*.

"**Conflict or variance between the rules,**" **&c.**—As to rules of *practice* in cases in which there is a conflict, see (n.) "Where no rule or variance," Additional Notes, Pt. IV., (n.) "Construction of, &c.," p. 327, *supra*.

If there is no "conflict or variance" the sub-section does not apply. (*The Bernina*, 12 P. D., p. 95; *Manners* v. *New*, 29 C. D., p. 735; *Re Terry*, 32 C. D., p. 23.)

"**The Rules of Equity shall prevail.**"—This sub-section refers to *rules of equity*, not to *rules of practice*. (*La Grange* v. *McAndrew*, 4 Q. B. D. 210; *Dalrymple* v. *Leslie*, 8 Q. B. D. 5; *Kearsley* v. *Philips*, 10 Q. B. D., at p. 41; *Harrison* v. *Rutland*, (1893) 1 Q. B., p. 149.) But the cases seem to show that the equitable *practice* is also followed when it results from the adoption of equitable doctrines; cf. (n.) "Parties," p. 421, *infra*.

"The Court is now not a Court of Law or a Court of Equity, but a Court of Complete Jurisdiction (cf. s. 24, s.s. 2, 4, and 7), and if there were *a variance* between what, before the Judicature Act, a Court of Law and a Court of Equity would have done, the rule of the Court of Equity must now prevail." *Per* Earl Cairns in *Pugh* v. *Heath*, 7 App. Cas., p. 237. But these Acts do not abolish the distinction between law and equity, see the judgment of Cotton, L.J., in *Joseph* v. *Lyons*, 15 Q. B. D., p. 285 (C. A.).

The result of ss. 24 and 25 as regards equities, seems to be that all equities are to be recognised and given effect to, that the effect given to stipulations in contracts (as to time *or otherwise*) by Courts of Equity is to prevail in all Courts (s.s. 7, *supra*), and that if there is a conflict or variance between equitable principles and those of the common law, the former are to prevail. The following are some instances of conflict or variance in which the equitable rule has been held to prevail.

Accord and Satisfaction.—See (n.) "Bond, &c.," p. 401.

Admissions: Infancy: Lunacy.—It is a principle of equity that infants and persons of unsound mind cannot make binding admissions. At common law it seems to have been otherwise, as to infants. The equity principle, and also the practice founded upon it, of not allowing interrogatories to be administered to an infant, prevailed until recently. *Mayor* v. *Collins*, 24 Q. B. D. 361; *Curtis* v. *Mundy*, (1892) 2 Q. B. 178; nor to the guardian *ad litem* of a lunatic. *Ingram* v. *Little*, 11 Q. B. D. 251. See now as to discovery from infants, O. 31, r. 29.

Jud. Act, 1873, s. 25 (s.s. 11).

Assignment of after-acquired property. Bills of Sale.—In equity future property has always been assignable if sufficiently described to be identified. Since this Act the Courts of Law follow this rule. (*Lazarus* v. *Andrade*, 5 C. P. D. 318; *Tailby* v. *Official Receiver*, 13 App. Cas. 523; *Re Clarke*, 36 C. D. 348.)

Agreement for Lease.—A tenant *in possession* holding under an agreement for a lease (of which specific performance would be decreed, *Swain* v. *Ayres*, 21 Q. B. D., at p. 293), now holds as if a lease had been granted, and there are no longer two estates as formerly (*Walsh* v. *Lonsdale*, 21 C. D. 9; *Lowther* v. *Heaver*, 41 C. D., p. 264; *Coatsworth* v. *Johnson*, 55 L. J. Q. B. 220; *Re Maughan*, 14 Q. B. D. 956; *Allhusen* v. *Brooking*, 26 C. D. 559; *Furness* v. *Bond*, W. N. (88) 78; *Strong* v. *Stringer*, 5 Times R. 638; *Pugh* v. *Heath*, *supra*, 7 App. Cas., p. 237; *Crump* v. *Temple*, 7 Times R. 120); and even if specific performance is impossible the rule has been held to apply. (*Re Serle*, 105 L. T. Jo., p. 312.) The *equitable* assignee of a lease is not, however, entitled to the benefit of an option given to the lessee, his executors, and assigns. *Friary, &c., Breweries* v. *Singleton*, (1899) 1 Ch. 86; reversed on the facts, (1899) 2 Ch. 261.

But these cases refer to Courts which have jurisdiction in law and equity, and if the Court *has no equitable jurisdiction*, as in a County Court where the value of the premises exceeds £500, they do not apply. (*Foster* v. *Reeves*, (1892) 2 Q. B. 255, cited s. 91 (n.).)

Contract, Rescission of.—Misrepresentation.—There was a difference as to this between the rules of Equity and the rules of Common Law which has now disappeared. (*Redgrave* v. *Hurd*, 20 C. D., p. 12; *Smith* v. *Chadwick*, 20 C. D. 27.)

Contribution.—Joint Adventures.—See *Lowe* v. *Dixon*, 16 Q. B. D. 455: White & Tudor, L. C. (1897), Vol. II., p. 540; 1 Smith's L. Cases, 10th ed., p. 151; (n.) "Contribution." O. 16, r. 48, Vol. I., p. 196.

Conversion, Equitable.—The doctrine of equitable conversion is now recognised in the High Court. (*Re the goods of Gunn*, 9 P. D. 242; *A.-G.* v. *Dodd*, (1894) 2 Q. B., p. 156.)

Costs, Interest on.—In equity interest on costs ran from the allocatur, at law from the judgment, and if nothing to the contrary could be gathered from these rules, the equity rule would prevail, but now, in all Divisions, unless by special order, the interest runs from the judgment (*Pyman* v. *Burt*, W. N. (84) 100; cf. *Eardley* v. *Knight*, 41 C. D. 537); or interlocutory order. (*Taylor* v. *Roe*, (1894) 1 Ch. 413.)

Costs.—Solicitor and Client.—See J. A. 1890, s. 5 (n.), p. 512.

Covenants running with Land. Notice.—As to the effect of this s.s. on the question of notice with regard to covenants running with the land, see *Spencer's Case*, Smith's L. C. (1896), Vol. I., p. 52.

Default in giving Security for Costs.—When security for costs is not given when ordered, the equity rule will prevail, and the action may be dismissed on summons, following the rule in equity. (*La Grange* v. *McAndrew*, 4 Q. B. D. 210.)

Equity to Settlement.—Semble, a wife may now set up her equity against the legal claim of the husband to the rents of her real estate. (*Fowke* v. *Draycott*, 29 C. D., p. 1003; but see *Heron* v. *H.*, W. N. (87) 158.)

Executor and Administrator.—Gratuitous Bailee.—"The rule at law as well as in equity now is that an executor or administrator is in the position of a gratuitous bailee who cannot be charged with the loss of his testator's assets without wilful default." (M.R., *Job* v. *Job*, 6 C. D. 562; and cf. *Jobson* v. *Palmer*, (1893) 1 Ch. 71; and see as to Wilful Default, O. 33, r. 2 (n.).)

Foreclosure.—Statute of Limitations.—The Statute ran in Equity against a mortgagee from the judgment of foreclosure absolute, not from the mortgage, as at law. The High Ct. of Justice will now

Jud. Act, 1873, s. 25 (s.s. 11).

give effect to the equitable right. (*Pugh* v. *Heath*, 7 App. Cas., p. 327.)

Interest—Recovery of from Agent.—In an action against agents at Common Law for an account of proceeds of sale, interest on such proceeds could not be recovered, but now the principle of equity is to prevail. (*Harsant* v. *Blaine*, 56 L. J. Q. B. 511.)

Mortgagees.—The rights of a legal mortgagee are to be assimilated to those of an equitable mortgagee. *Per* North, J., *Fowke* v. *Draycott*, 29 C. D., p. 1003.

Notice—Constructive.—This is an equitable doctrine unknown to the Common Law, but must now be dealt with by all the Courts. (*English, &c., Investment Co.* v. *Brunton*, (1892) 2 Q. B., p. 708.)

Part Performance.—See this (n.), s. 24, ss. 7, p. 410.

Parties.—The rules of the old Court of Chancery as to parties to actions or suits maintainable in it, have now to be applied (save where such rules are inconsistent with R. S. C.) in all Divisions of the High Court when exercising the old jurisdiction of the old Court. See judgment of Lindley, L.J., in *Temperton* v. *Russell*, (1893) 1 Q. B., p. 438.

Partnership.—It used to be stated that in equity partnership debts were several as well as joint, but the Court has held that there was no such settled rule in equity. (*Kendall* v. *Hamilton*, 4 App. Cas. 504, *diss.* Lord Penzance.)

Payment of Debts by Executor after Action, &c.—"The equity rule established by the House of Lords in *Darston* v. *Lord Orford* (Prec. Ch. 188) must now prevail both at law and in equity, and therefore if an executor or administrator, after commencement of a creditor's action but before judgment, voluntarily pays any creditor in full, he will be considered as having made a good payment, and will be allowed it in passing his accounts." (*Re Radcliffe*, 7 C. D., p. 734, M.R.; *Vibart* v. *Coles*, 24 Q. B. D. 364 (C. A.); *Harris* v. *H.*, 35 W. R. 710.)

Power Coupled with Interest.—In equity a power coupled with an interest was not revocable by the death of the principal (*Lepard* v. *Vernon*, 2 V. & B. 51), and *semble*, this is now the law, see 23 Sol. Jo., p. 816.

Principal and Surety.—See *Becherraise* v. *Lewis*, 7 C. P. 372.

Purchaser for Value without Notice.—A. mortgaged a lease to B.; B. deposited it with his solicitor C.: C., by means of the lease and a fraudulent memorandum of deposit, obtained a loan on the security of the lease, &c., from D. A. and B. brought an action against D. for the delivery up of the deed; D. claimed as purchaser for value without notice, and also under this sub-section to keep the deed. Hall, V.-C., held the sub-section did not apply. (*James* v. *Giles*, W. N. (80) 170; *Manners* v. *Mew*, 29 C. D. 725; and cf. *Cooper* v. *Vesey*, 20 C. D. 611, and *Re Ingham*, (1893) 1 Ch., p. 361; *Basset* v. *Nosworthy*, White & Tudor, L. C. (1897), Vol. II., p. 157.)

Specialty Debt.—Plea of Accord and Satisfaction.—Following the rule in equity, accord and satisfaction is now a good plea to an action for a specialty debt. (*Steeds* v. *S.*, 22 Q. B. D. 537.)

Subject-matter of Action under £10.—See (n.) "Value of Subject-matter," O. 1, r. 1 (n.).

Title Deeds.—Cf. *Manners* v. *Mew*, 29 C. D. 725; *Re Ingham*, (1893) 1 Ch. 352.

Vendor's Lien for Unpaid Purchase Money.—This right depended at law upon possession, and after conveyance executed by the vendor, the right to a lien was gone. In equity the right continued as long as the purchase money was in fact unpaid, and that rule now prevails. See *Mackreth* v. *Symmons* and notes, White & Tudor, L. C. (1897), Vol. II., p. 935.

Rules of Practice, Variance in.—See (n.) "Where no Rule or Variance," Additional Notes, Pt. IV., p. 328, *supra*.

Jud. Act, 1873, ss. 26—28.

PART III.

Sittings and Distribution of Business.

Abolition of terms.

26. In all other cases in which, under the law now existing, the terms into which the legal year is divided are used as a measure for determining the time at or within which any act is required to be done, the same may continue to be referred to for the same or the like purpose, unless and until provision is otherwise made by any lawful authority. Subject to rules of court, the High Court and the Court of Appeal, and the judges thereof respectively, or any such commissioners as aforesaid, shall have power to sit and act, at any time, and at any place, for the transaction of any part of the business of such courts respectively, or of such judges or commissioners, or for the discharge of any duty which by any Act of Parliament, or otherwise, is required to be discharged during or after term.

As revised by S. L. Rev. (No. 2) Act, 1893.

Cross References.—Jurisdiction on circuit, s. 29, *infra* and *note*.

"**Terms.**"—Terms are still to be kept alive for the purpose of reference in all cases in which they are used as a measure for determining the time within which an act is required to be done. (*College of Christ* v. *Martin*, 3 Q. B. D. 16.) See (n.) "Unless and until," *infra*.

"**The Sitting.**"—As to sittings in London and Middlesex, see (n.), *infra*, "At any place," and s. 37.

"**Unless and until Provision,**" **&c.**—Provision has been made for setting aside an award. See O. 64, r. 14; and *Re Oliver and Scott's Arbitration, &c.*, 43 C. D. 310.

"**Subject to Rules,**" **&c.**—As to sittings and vacations, O. 63, *post*.

"**At any Place.**"—By an order dated 22 May, 1883, and made under s. 20 of Cts. of Justice Building Act, 1865, London causes are to be tried "for ever thereafter" at the Royal Courts.

But by the Supreme Court of Judicature (London Causes) Act, 1891, p. 514, *post*, sittings may be held by judges in the City of London. Cf. ss. 30 and 37.

Vacations.

27. Her Majesty in Council may from time to time, upon any report or recommendation of the council of judges of the Supreme Court hereinafter mentioned, with the consent of the Lord Chancellor, make, revoke, or modify orders regulating the vacations to be observed by the High Court and the High Court of Appeal, and in the offices of the said Courts respectively; and any order in council made pursuant to this section shall, so long as it continues in force, be of the same effect as if it were contained in this Act; and rules of Court may be made for carrying the same into effect in the same manner as if such order in council were part of this Act.

As revised by S. L. Rev. (No. 2) Act, 1893.

"**Vacations.**"—See O. 63.

"**Council of Judges.**"—See s. 75. By J. A. 1875, s. 17, the reference herein to certain judges is to be deemed to refer to the judges mentioned in the said section (17) upon whose recommendation an Order in Council may be made.

Sittings in vacation.

28. Provision shall be made by rules of court for the hearing, in London or Middlesex, during vacation, by judges of the High

Court and the Court of Appeal respectively, of all such applications as may require to be immediately or promptly heard.

Jud. Act, 1873, ss. 28, 29.

"**Provision shall be made.**"—No provision has ever been made for vacation sittings by the C. A. As to interim orders by judge of Court of Appeal pending appeal in vacation, see s. 52, *infra*. As to vacation sittings by judges of High Court, see O. 63, rr. 11—13.

"**As may require.**"—See *Crom* v. *Samuels*, 2 C. P. D. 21.

Jurisdiction of Judges of High Court on circuit.

29. Her Majesty, by commission of assize or by any other commission, either general or special, may assign to any judge or judges of the High Court of Justice or other persons usually named in commissions of assize, the duty of trying and determining within any place or district specially fixed for that purpose by such commission, any causes or matters, or any questions or issues of fact or of law, or partly of fact and partly of law, in any cause or matter depending in the said High Court, or the exercise of any civil or criminal jurisdiction capable of being exercised by the said High Court; and any commission so granted by Her Majesty shall be of the same validity as if it were enacted in the body of this Act; and any commissioner or commissioners appointed in pursuance of this section shall, when engaged in the exercise of any jurisdiction assigned to him or them in pursuance of this Act, be deemed to constitute a court of the said High Court of Justice; and, subject to any restrictions or conditions imposed by rules of court and to the power of transfer, any party to any cause or matter involving the trial of a question or issue of fact, or partly of fact and partly of law, may, with the leave of the judge or judges to whom or to whose division the cause or matter is assigned, require the question or issue to be tried and determined by a commissioner or commissioners as aforesaid, or at sittings to be held in Middlesex or London as hereinafter in this Act mentioned, and such question or issue shall be tried and determined accordingly.

A cause or matter not involving any question or issue of fact may be tried and determined in like manner with the consent of all the parties thereto.

"**Commission of Assize.**"—Sittings in London, s. 37. Transfer to High Court, s. 16. Saving of general and other commissions in force at date of Act, ss. 76, 93. Appointment of place for, J. A. 1875, s. 23. Regulation of Circuits, J. A. 1875, s. 23. Circuit officers, J. A. 1884, s. 21. Meaning of "Assizes," J. A. 1875, s. 23; Interpretation Act, 1889, s. 13.

"**To any Judges of H. C.**"—As to obligation of judges of High Court and Court of Appeal to go circuit, and sit in London, &c., see s. 37, *infra*, (n.) "Shall be held before Judges," and cf. s. 30, *infra*.

"**Usually Named.**"—*I.e.*, Queen's Counsel, Serjeants, and now Cty. Ct. Judges; J. A. 1884, s. 7, Cty. Ct. Act, 1888, ss. 16, 17.

"**Issues.**"—See J. A. 1875, s. 22; O. 33 and note. *Trial.*—O. 36, Part 2. *Transfer.*—O. 49. By O. 36, r. 44, the Court or a judge may order a cause or issue to be tried by a commissioner; and see Arb. Act, 1889, s. 14, *infra*.

"**Within any Place or District,**" **&c.**—As to person before whom sittings in Middlesex and on Circuits are to be held, see s. 37, as to Regulation of Circuits, s. 93, *infra*; J. A. 1875, s. 23.

"**Deemed to Constitute a Court.**"—*E.g.*, has all the statutory jurisdiction conferred on a "Court or a Judge," see (n.) "Court or a Judge," Additional Notes, Pt. IV., p. 329, *supra*.

Jud. Act, 1873, ss. 29—33.

Appeal.—An appeal lies direct to the C. A. from order of reference made by judge at Nisi Prius (*Hoch* v. *Boor*, 43 L. T. 425), and from decision of judge of assize. (*Mellor, &c.* v. *Royal, &c., Co.*, W. N. (85) 172.)

"**In Middlesex or London** * * * **as hereinafter**," **&c.**—See s. 26, *supra*, (n.) "At any place," and next section (30), and s. 37.

Sittings for trial by jury in London and Middlesex.

30. Subject to rules of court, sittings for the trial by jury of causes and questions or issues of fact shall be held in Middlesex and London, and such sittings shall, so far as is reasonably practicable, and subject to vacations, be held continuously throughout the year by as many judges as the business to be disposed of may render necessary. Any judge of the High Court sitting for the trial of causes and issues in Middlesex or London, at any place heretofore accustomed, or to be hereafter determined by rules of court, shall be deemed to constitute a court of the High Court.

"**Sittings shall be held**," **&c.**—See ss. 26 (n.) and 37. By Local Gov. Act, 1888, s. 89 (3), Cty. of London and of Middlesex are to be one for purpose of legal proceedings. See *ibid.*, s. 40, s.s. (2); and cf. S. C. J. (London Causes) Act, 1891, p. 514, *post*.

"**Subject to Vacations.**"—Sect. 27, *supra*; O. 63.

"**By as many Judges.**"—See s. 37 (n.).

"**Hereinafter determined.**"—By Order in Council, 22 May, 1883, London causes are to be tried for ever thereafter at the Royal Courts of Justice, but cf. s. 26, *supra*, (n.) "At any place."

Central Criminal Court.—As to fixing sessions, J. A. 1881, s. 18.

31. [Division of High Court into five divisions, called respectively the Chancery Division, the Queen's Bench Division, the Common Pleas Division, the Exchequer Division, and the Probate, Divorce, and Admiralty Division.]

The paragraph in this section commencing "any deficiency," was repealed by S. L. R. Act, 1883.

32. [Power to alter Divisions by Order in Council.]

Revised by S. L. Rev. (No. 2) Act, 1893.

Order in Council.—By an order in council of the 16th December, 1880, which came into force 26 February, 1881, the Queen's Bench, Common Pleas, and Exchequer Divisions were reduced and consolidated into one Division, namely the Q. B. D., of which the Lord Chief Justice of England is President. The powers given to the L. C. J. of the Common Pleas, and the L. C. B. of the Exchequer, are to be exercised by L. C. Justice, J. A. 1881, s. 25, *post*.

Rules of Court to provide for distribution of business.

33. All causes and matters which may be commenced in, or which shall be transferred by this Act to, the High Court, shall be distributed among the several divisions and judges of the High Court, in such manner as may from time to time be determined by any rules of court, or orders of transfer, to be made under the authority of this Act; and in the meantime, and subject thereto, all such causes and matters shall be assigned to the said divisions respectively, in the manner hereinafter provided. Every document by which any cause or matter may be commenced in the High Court shall be marked with the name of the division, or with the name of the judge, to which or to whom the same is assigned.

"**Be Distributed.**"—See O. 5, rr. 5, 9.

"**Transfer.**"—See s. 36, and O. 49.

"**Shall be Assigned in the Manner.**"—See ss. 34, 36, *infra*; J. A. 1875, s. 11; O. 5, rr. 5—9, and next section and note.
"**Shall be marked.**"—With name of division, see J. A. 1875, s. 11, O. 5, Part 2; with name of judge in C. D., s. 42, *infra*; O. 5, r. 9; with name of master, in Q. B. D., O. 5, r. 6.

Assignment of certain business to particular Divisions of High Court subject to Rules.

34. There shall be assigned (subject as aforesaid) to the Chancery Division of the said court:

"**Shall be Assigned.**"—Cf. J. A. 1875, s. 11, (n.) "Subject, &c.," p. 465. As to retaining or transferring matters wrongly assigned, see s. 36, *infra*; J. A. 1875, s. 11, s.s. 2, p. 465.
As to how the jurisdiction in such matters is to be exercised, cf. s. 23, *supra*, (n.) "As nearly as may be."

Chancery Division.

(1.) All causes and matters pending in the Court of Chancery at the commencement of this Act:

(2.) All causes and matters to be commenced after the commencement of this Act, under any Act of Parliament by which exclusive jurisdiction, in respect to such causes or matters, has been given to the Court of Chancery, or to any judges or judge thereof respectively, except appeals from county courts:

"**Any Act of Parliament,**" **&c.**—See (3), *infra*, (n.).
As to statutory jurisdiction of Court of Chancery, see D. C. P., 6th ed., p. 2037, and (3), *infra*, (n.).
"**To the Court of Chancery.**"—See s. 76, (m.) "Lord High Chancellor," "Court of Chancery."
"**Or to any Judges,**" **&c.**—As to the jurisdiction of the L. C. and M. R. to order delivery of bill of costs of solicitor under Solicitors Act, 1843, see *Re Pollard*, 20 Q. B. D. 656, cited s. 76, *infra*. As to jurisdiction of Judge in Chambers, see s. 39.
"**Appeals from County Courts.**"—See s. 45 and (n.), *infra*.

(3.) All causes and matters for any of the following purposes:
The administration of the estates of deceased persons;
The dissolution of partnerships or the taking of partnership or other accounts;
The redemption or foreclosure of mortgages;
The raising of portions, or other charges on land;
The sale and distribution of the proceeds of property subject to any lien or charge;
The execution of trusts, charitable or private;
The rectification, or setting aside, or cancellation of deeds or other written instruments;
The specific performance of contracts between vendors and purchasers of real estates, including contracts for leases;
The partition or sale of real estates;
The wardship of infants and the care of infants' estates.

Other proceedings assigned to C. D.
All proceedings commenced under Trustee Act, 1893. See O. 54B.
Application under Conveyancing Act, 1881. See s. 69 of the Act.
Application under Settled Land Act, 1882. See s. 46 of the Act.

Jud. Act, 1873, s. 34.

Application under section 14 (2) of the Finance Act, 1894. O. 55, r. 9 (c).

Application under Judicial Trustee Act. See Rules under Vol. II., p. 605.

Appeals and applications to the Court under Land Transfer Acts, 1895 and 1897. See Land Transfer Rules, 1898.

Chancery Division.

Cross References.—Assignment, retainer, and transfer of causes, J. A. 1875, s. 11. Assignment to Judge, O. 5, r. 9. Hearing by other Judge of same Division, J. A. 1884, s. 6. Construction of Acts relating to former courts, s. 76.

Jurisdiction of Chancery Division.—A man may now bring in the Chancery Division any variety of action which might have been brought in the common law courts (*Warner* v. *Murdoch*, 4 C. D., p. 752), but the Court may refuse to retain it, and order it to be transferred. s. 36, and J. A. 1875, s. 11, s.s. 2, p. 465.

"What is assigned to the Chancery Division" (by this section) "is by no means co-extensive with the old equity jurisdiction, but much less." *Per* Jessel, M.R., in *Rogers* v. *Jones*, 7 C. D., p. 349.

Over particular persons.—Infants, see s. 25, s.s. 10, p. 418; O. 16, r. 16 (n.): Additional Notes, Pt. IV., p. 333. Lunatics, O. 16, r. 17, Additional Notes, Pt. IV., p. 342. Solicitors, Additional Notes. Pt. IV., p. 356.

Right to Trial by Jury.—The *right* of parties to a trial by jury is taken away as to actions assigned to C. D. (See O. 36, rr. 3 and 6.)

Accounts.—As to taking, in the Q. B. D., see O. 15 (n.).

Transfer.—The Courts will exercise their power of transfer whenever they feel that another Division is more competent to deal with the subject-matter, see O. 49 and cases there cited; or they may retain the action, see s. 36, *infra*.

Queen's Bench.

There shall be assigned (subject as aforesaid) to the Queen's Bench Division of the said court:

Note.—All matters assigned by this section to the Common Pleas and Exchequer (see *infra*) are now assignable to the Q. B. D., see s. 32, (n.) "Order in Council," *supra*, and as to Bankruptcy, see (n.), *infra*.

(1.) All causes and matters, civil and criminal, pending in the Court of Queen's Bench at the commencement of this Act:

(2.) All causes and matters, civil and criminal, which would have been within the exclusive cognizance of the Court of Queen's Bench in the exercise of its original jurisdiction, if this Act had not passed.

Powers now exercisable by L. C. J.—See J. A. 1881, s. 25, p. 498.

Crown and Revenue Cases.—As to application of R. S. C. to Crown and Revenue cases, see O. 68, ss. 1 and 2.

Mandamus. Quo Warranto. Prohibition.—These proceedings are now governed by Crown Office Rules, 1886. As to mandamus, cf. O. 53, and as to prohibition and *quo warranto*, cf. O. 68, r. 2 (n.).

Lord Mayor.—Swearing-in of, to take place in Q. B. D., J. A. 1881, s. 17.

There shall be assigned (subject as aforesaid) to the Common Pleas Division of the said court:

(1.) All causes and matters pending in the Court of Common Pleas at Westminster, the Court of Common Pleas at Lancaster, and the Court of Pleas at Durham, respectively, at the commencement of this Act:

(2.) All causes and matters which would have been within the

exclusive cognizance of the Court of Common Pleas at Westminster, if this Act had not passed.

Common Pleas Division.—See "Note," *supra*, and s. 32 (n.).
Fines and Recoveries Act, s. 91.—See *Re Giles*, 70 L. T. 757.

There shall be assigned (subject as aforesaid) to the Exchequer Division of the said court:

(1.) All causes and matters pending in the Court of Exchequer at the commencement of this Act:

(2.) All causes and matters which would have been within the exclusive cognizance of the Court of Exchequer, either as a court of revenue or as a common law court, if this Act had not passed:

Exchequer Division.—See "Note," *supra*, and s. 32 (n.).
"Revenue."—In *Churton* v. *Wilkin*, W. N. (84) 63, a case which was said by the A.-G. to affect the revenue of the Crown, was removed from a Cty. Ct. to Q. B. D. As to procedure, see O. 68, r. 1 (c).

[**S.s.** (3) and (4) assigned to Ex. D. matters in London Court of Bankruptcy.]

Bankruptcy.—These sections were repealed by J. A. 1875, s. 33. By Bankruptcy Act, 1883, ss. 93, 94, the jurisdiction of the London Court of Bankruptcy is united with and forms part of the S. C. and its business assigned to such Division of the H. C. as L. C. may direct. In 1898 the L. C. assigned this business to Wright, J.

There shall be assigned (subject as aforesaid) to the Probate Divorce and Admiralty Division of the said High Court:

Hearing.—As to hearing, see s. 44, p. 430.

(1.) All causes and matters pending in the Court of Probate, or in the Court for Divorce and Matrimonial Causes, or in the High Court of Admiralty, at the commencement of this Act:

(2.) All causes and matters which would have been within the exclusive cognizance of the Court of Probate, or the Court for Divorce and Matrimonial Causes, or of the High Court of Admiralty, if this Act had not passed.

See J. A. 1875, s. 11, sub-s. 3, p. 466, and O. 5, r. 5, which supplement this sub-section.
Recall of Probate.—Cf. *Priestman* v. *Thomas*, 9 P. D., pp. 214, 215; *Smart* v. *Tranter*, 40 C. D., p. 165, 43 C. D. 587.
Prize Court.—All causes and matters within the jurisdiction of the High Court as a Prize Court are assigned to this Division, J. A. 1891, s. 4, *post*.
Merchant Shipping Act.—The jurisdiction of the High Court under the Merchant Shipping Act, 1894, with the exception of that under ss. 28, 30, and 504 of the Act, was added to this Division by R. S. C., 10 Dec. 1894, *post*, p. 626.
Summons for Direction.—Not to apply to Admiralty actions within this section, O. 30, r. 1 (d).

35. [Is repealed by J. A. 1875, s. 33, and s. 11 thereof substituted.]

36. Any cause or matter may at any time, and at any stage thereof, and either with or without application from any of the

Jud. Act, 1873, ss. 36—39.

parties thereto, be transferred by such authority and in such manner as rules of court may direct, from one division or judge of the High Court to any other division or judge thereof, or may by the like authority be retained in the division in which the same was commenced, although such may not be the proper division to which the same cause or matter ought, in the first instance, to have been assigned.

"**Rules of Court.**"—Transfer, O. 49.

"**Be Retained.**"—*Wrong Assignment.*—J. A. 1875, s. 11, s.s. 2 (n.), p. 465.

Sittings in London and Middlesex and on Circuits.

37. Subject to any arrangements which may be from time to time made by mutual agreement between the judges of the High Court, the sittings for trials by jury in London and Middlesex, and the sittings of judges of the High Court under commissions of assize, oyer and terminer, and gaol delivery, shall be held by or before judges of the Queen's Bench Division of the High Court; provided that it shall be lawful for her Majesty if she shall think fit, to include in any such commission any ordinary judge of the Court of Appeal or any judge of the Chancery Division to be appointed after the commencement of this Act, or any of her Majesty's counsel learned in the law, who, for the purposes of such commission, shall have all the power, authority, and jurisdiction of a judge of the High Court.

"**Sittings for Trial,**" **&c.**—Cf. s. 30, *supra.*

"**Commissions of Assize.**"—See J. A. 1875, s. 23, p. 471. Jurisdiction on Circuits, s. 29, *supra.*

"**Shall be held before Judges,**" **&c.**—By s. 8 of S. C. Jud. Act, 1875, *post*, any judge of the P. D. & A. Div. appointed after the passing of that Act is bound to go circuit, and to take part in the London and Middlesex sittings (see S. C. J. (London Causes) Act, 1891, p. 514, *post*) for trials by jury.

By App. Jur. Act, 1876, s. 15, p. 481, the additional ordinary judges of the C. A. appointed under that Act are, subject to certain specified conditions, under an obligation to go circuit, &c. The intention of s. 7 of J. A. 1884, appears to be to enable county court judges to be named as Commissioners of Assize.

38. [Relating to the rota of judges for the trial of election petitions, is repealed by S. L. R. Act, 1883. See J. A. 1881, s. 13, *post.*]

Powers of one or more Judges not constituting a Divisional Court.

39. Any judge of the High Court may, subject to any rules of court, exercise in court or in chambers all or any part of the jurisdiction by this Act vested in the High Court, in all such causes and matters, and in all such proceedings in any causes or matters, as before the passing of this Act might have been heard in court or in chambers respectively, by a single judge of any of the courts whose jurisdiction is hereby transferred to the High Court, or as may be directed or authorised to be so heard by any rules of court to be hereafter made. In all such cases, any judge sitting in court shall be deemed to constitute a court.

Cross References.—Setting aside, or discharging orders in Chambers, s. 50, *infra* (n.). Appeals from, J. A. 1894, s. 1 (4). Chambers in Q. B. D., O. 54. Chambers in C. D., O. 55. Powers of Masters Q. B. D. in Chambers, O. 54, r. 12; of Masters C. D.,

O. 55. r. 15; of District Registrars, O. 35, r. 6. Former Acts of Parliament to apply to Cts. hereunder, s. 76. Summary applications under 18 & 19 Vict. c. 134, s. 16, see J. A. 1884, s. 13.

"**The jurisdiction,**" **&c., &c.**—By this section all jurisdiction which might formerly have been exercised in Court by a judge of *any* Court the jurisdiction of which has been transferred to the High Court, may be exercised by any judge of the High Court. A judge at Chambers has, by the operation of this section, the jurisdiction of the High Court generally, and represents all Courts. *Per* Grove, J., *Clover* v. *Adams*, 6 Q. B. D., p. 624: and cf. s. 16, *supra*, p. 390. This section does not enable a judge to do anything in Chambers that a judge could not have done before its passing (*Baker* v. *Oakes*, 2 Q. B. D., p. 176; and cf. *Smeeton* v. *Collier*, 1 Ex. 457), and (n.) "Court or a Judge," Additional Notes, Pt. IV., p. 329.

Summary Application as to Trust Funds.—See J. A. 1884, s. 13 (n).

Mandamus.—In a case (anon.) referred to 92 L. T. Jo., p. 40, Charles, J., made an order of mandamus directing defendant to deliver up certain deeds, upon summons in Chambers.

Writ of Prohibition.—A judge at Chambers could set aside such a writ issuing out of Petty Bag Office. (*Amstell* v. *Lesser*, *infra*.)

An application for a prohibition to a Cty. Ct. judge may be made in Chambers, cf. O. 59, r. 8A.

Writ of Subpœna.—See J. A. 1884, s. 16 (n.), p. 503.

Writ of Attachment, Leave to Issue.—See O. 44, r. 2, Vol. I., p. 606.

Sale under Bankruptcy Act, 1883, *s.* 145.—This power may be exercised by judge in Chambers. (*Hunt* v. *Clifford*, W. N. (84), 86.)

Charging Order.—A charging order under s. 28 of the Solicitors Act, 1860, may be made by a judge in Chambers. (*Re Wood*, (1897) 1 Q. B. 314.)

Relief from Forfeiture.—Relief from forfeiture for nonpayment of rent will not be granted on summons. (*Wilson* v. *Bolton*, 10 Times Rep. 17.)

Solicitors Act, 1888. *Application for Costs under.*—Application under s. 13 must be made by summons. (O. 52, r. 24.)

Solicitors Act, 1870, *Application under.*—Applications to set aside an agreement under this Act may now be by summons. (*Re Thomas*, (1893) 1 Q. B. 670.)

Rescinding Decree Nisi in Chambers.—*Semble*, that a decree *nisi* pronounced in Court, should be rescinded in the same public and formal manner. (*Flower* v. *F.*, (1893) P. 290.)

Regulation of Railways Act, 1868, *s.* 41.—See this (n.), s. 16, p. 390.

"**Respectively.**"—Is equivalent to "either," cf. *Salm Kyrburg* v. *Posnanski*, 13 Q. B. D. 218; *Amstell* v. *Lesser*, 16 Q. B. D. p. 189.

"**A Court.**"—A commissioner of assize, or a judge presiding at a trial in London or Middlesex, constitutes a "Court," ss. 29, 30, *supra*; *Mellor* v. *Royal, &c., Co.*, W. N. (85) 172. See (n.) "Court or a Judge," Additional Notes, Pt. IV., p. 329.

Divisional Courts of the High Court of Justice.

40. Such causes and matters as are not proper to be heard by a single judge shall be heard by Divisional Courts of the High Court, which shall for that purpose exercise all or any part of the jurisdiction of the High Court. Any number of such Divisional Courts may sit at the same time. Every judge of the High Court shall be qualified and empowered to sit in any of such Divisional Courts. The president of every such Divisional Court of the High Court shall be the senior judge of those present, according to the order of their precedence under this Act.

"**Single Judge.**"—Every proceeding is to be disposed of by a single judge as far as practicable, App. Jur. Act, 1876, s. 17.

Jud. Act, 1873, ss. 40—44.

Divisional Court.—The number of judges who are to constitute a Divisional Court is now practically a matter to be determined by the President of the Division with the concurrence of two judges of the Division. See App. Jur. Act. 1876, s. 17 (n.); J. A. 1884, s. 4; O. 59. As to repeal of this section see note to next section.

Divisional Courts for business of Queen's Bench, Common Pleas, and Exchequer Divisions.

41. Subject to any rules of court, and in the meantime until such rules shall be made, all business belonging to the Queen's Bench, Common Pleas, and Exchequer Divisions respectively of the High Court, which, according to the practice now existing in the Superior Courts of Common Law, would have been proper to be transacted or disposed of by the Court sitting in Banc, if this Act had not passed, may be transacted and disposed of by Divisional Courts, which shall, as far as may be found practicable and convenient, include one or more judge or judges attached to the particular division of the said Court to which the cause or matter out of which such business arises has been assigned; and it shall be the duty of every judge of such last-mentioned division, and also of every other judge of the High Court who shall not for the time being be occupied in the transaction of any business specially assigned to him, or in the business of any other Divisional Court, to take part if required in the sittings of such Divisional Courts as may from time to time be necessary for the transaction of the business assigned to the said Queen's Bench, Common Pleas, and Exchequer Divisions respectively; and all such arrangements as may be necessary or proper for that purpose, or for constituting or holding any Divisional Courts of the High Court for any other purpose authorised by this Act, and also for the proper transaction of that part of the business of the said Queen's Bench, Common Pleas, and Exchequer Divisions respectively, which ought to be transacted by one or more Judges not sitting in a Divisional Court, shall be made from time to time under the direction and superintendence of the Judges of the High Court; and in case of difference among them, in such manner as a majority of the said Judges, with the concurrence of the Lord Chief Justice of England, shall determine.

Repeal.—The above sections 40 and 41, also ss. 42, 43, 44, and 46, are repealed by the App. Jur. A. 1876, s. 17, *post, so far as they are inconsistent* therewith. The repealing paragraph was itself repealed by the S. L. R. Act, 1883.

"**Rules of Court.**"—O. 59.

42. [Provided for the distribution of pending business, and for assignment of matters commenced after Act in C. D. to a judge of that Division by marking the cause with the name of such judge of the C. D. as plaintiff thought fit. See now O. 5, r. 9 (n.), Vol. I.,

See s. 41 (n.), *supra*, and S. L. Rev. (No. 2) Act, 1893.

43. [Divisional Court for C. D., rep. S. L. R. Act, 1883.]

Divisional Courts for business belonging to the P. D. and Ad. Division.

44. Any cause or matter assigned to the said Probate, Divorce and Admiralty Division may be heard at the request of the president of such division, with the concurrence of the president of the High Court, by any other judge of the High Court.

Cf. (n.) "Repeal," s. 41.

"**Assigned.**"—See s. 34, p. 425, *supra*.

Divorce.—As to Divorce appeals, J. A. 1881, ss. 9 and 10.

Jud. Act, 1873, s. 45.

Appeals from inferior Courts to be determined by Divisional Courts.

45. All appeals from Petty or Quarter Sessions, from a County Court, or from any other inferior court, which might before the passing of this Act have been brought to any court or judge whose jurisdiction is by this Act transferred to the High Court, may be heard and determined by divisional courts of the High Court, consisting respectively of such of the judges thereof as may from time to time be assigned for that purpose, pursuant to the rules of court, or (subject to rules of court) as may be so assigned according to arrangements made for the purpose by the judges of the High Court. The determination of such appeals respectively by such divisional courts shall be final unless special leave to appeal from the same to the Court of Appeal shall be given by the divisional court by which any such appeal from an inferior court shall have been heard.

Note.—Unless a case is clearly within this section, sect. 19 applies. (*Guardians of Holborn* v. *Chertsey Guardians*, 15 Q. B. D. 76.)

This section only applies to a case where there might have been an appeal before the passing of the Act. (*Hull* v. *London, &c., R. Co.*, 17 Q. B. D., p. 232.) And see (n.) "Original Jurisdiction," *infra*.

Cross References.—Rules as to mode and time of appealing, O. 59, rr. 10. 17. Appeals to C. A., s. 19, and (n.). As to criminal matters, s. 47, *infra*. As to orders by consent or as to costs, s. 49, *infra*. Discharging orders in Chambers, s. 50.

"**All Appeals.**"—The jurisdiction is *appellate* only, and cross appeals by defendants cannot be entertained where such defendants would have had no right to prosecute an original appeal. "*The Alne Holme*," (1893) P. 173.) Cf. (n.) "Original Jurisdiction," *infra*, p. 433; and s. 19 (nn.) "Consultative Decision of High Court," p. 394; "Special Case," p. 397; "Quarter Sessions," *infra*. p. 432.

J. A. 1894, *s.* 1 (5), *p.* 519.—In all cases where there is a right of appeal to the High Court from any court or person, the appeal shall be heard by a divisional court, and the judgment is to be final unless leave be given by that Court *or the C. A.*

Appeals from a Judge in Q. B. D.—All appeals from a judge in Q. B. D. are to a Div. Ct., O. 54, r. 23, *except* in matters of "practice and procedure." J. A. 1894, s. 1, s.s. 4, p. 519.

Arbitration.—By J. A. 1884, s. 8, p. 501. this section is extended to appeals from any award or certificate of a referee or arbitrator when there has been a compulsory reference. See Arb. Act, 1889, s. 14, *post*, and (nn.), pp. 555, 556.

Art Copyright Act, 1862.—*Semble*, no appeal. (*Re The Young Duchess*, 8 Times Rep. 41.)

Finance Act, 1894.—Appeal by petition to Q. B. D., after statement to Commissioners, see R. S. C., p. 627, *post*.

Habeas Corpus.—*Quære*, whether appeal lies from order giving leave to issue, *Ex p. Emerson*, 11 Times Rep. 218. Cf. J. A. 1894, s. 1 (b) (i.), p. 518; and (n.) "Habeas Corpus," s. 19, *supra*, p. 396.

Matrimonial Causes Act, 1878. See O. 59, r. 4A.

Registration and Election Cases.—Cf. J. A. 1881, s. 14, p. 494.

Stating case for opinion of Court, 20 & 21 *Vict. c.* 43.—See *Power* v. *Wigmore*, (1872) L. R. 7 C. P., p. 388.

Summary Jurisdiction (Married Women) Act, 1895.—Appeal lies to the P. D. & Ad. Division, under s. 11. (*Manders* v. *M.*, (1897) 1 Q. B. 474.)

Workmen's Compensation Act, 1897.—Appeal from County Court Judge as arbitrator is to C. A. See the Act, s. 4, Second sched.

"**Petty Sessions.**"—Appeal from is given by 20 & 21 Vict. c. 43, and 42 & 43 Vict. c. 49, s. 33 (The Summary Jurisdiction Act); and

Jud. Act, 1873, s. 45.

see the Summary Jurisdiction Rules, 1880, r. 17, and cf. Interpretation Act, 1889, s. 13, s.s. 11, and *Leicester* v. *Lewitt*, 68 L. T. 201.

"**Quarter Sessions.**"—Cf. J. A. 1894, s. 2 (1) (3), p. 520, and (n.) "Special Case," p. 397.

"**County Courts.**"—(See Cty. Cts. Act, 1888, Part V.; O. 59, rr. 10—17.) Appeals from County Courts are now governed by ss. 120—132 of The County Courts Act, 1888, but only a *limited* appeal is given: but in cases where there is no right of appeal on account of the limit imposed, the judge may give leave to appeal. An appeal on questions of law, raised and submitted at the trial (*Smith* v. *Baker*, (1891) A. C. 325), is now given in every action or matter which would come before a County Court judge. (*Neptune, &c., Co.* v. *Slater*, (1895) P., p. 48.) But there is no appeal from an order punishing a contempt of a criminal kind (*Lewis* v. *Owen*, (1894) 1 Q. B. 102); nor as to ruling of judge on sufficiency of stamp. (*Mander* v. *Ridgway*, (1898) 1 Q. B. 501.)

Appeals from Cty. Cts. must now be had in accordance with O. 59, rr. 10—18; Cty. Ct. Rules (89), O. 32, r. 1. Appeals in Bankruptcy (Cty. Ct.) matters, are to Div. Ct., Bankruptcy Appeals (County Courts) Act, 1884. An appeal from a decision of High Court on special case stated by judge of Cty. Ct. is not an appeal from a County Court. (*Ex p. Dawes*, 17 Q. B. D. 275.)

Judge's Notes.—See O. 59, rr. 8, 13 (n.).

Point of Law not taken at Trial.—In such case there can be no appeal. (*Smith* v. *Baker*, (1891) A. C. 325; *Wohlgemuthe* v. *Cote* (1899), 1 Q. B., 501.) The omission of the judge to direct jury as to the law, is a point of law. (*Clifford* v. *Thames, &c., Co.*, (1898) 1 Q. B. 314.

Interlocutory Appeals from County Courts.—Since the Act of 1888 it is no longer an objection to the hearing of an appeal that it is against an interlocutory order. (*Gilson* v. *Kilner*, 69 L. T. 310.)

Admiralty Jurisdiction.—See County Court Admiralty Jurisdiction Act, 1868; Cty. Ct. 1888, s. 120, R. S. C., O. 59, r. 4. An appeal lies although amount decreed by Cty. Ct. does not exceed £50 (*The Eden*, (1892) P. 67); and without security for costs being given. (*The Neptune S. N. Co.* v. *Selater*, (1894) P. 140.)

Where a Div. Ct. of the P. D. and A. Div. alters on appeal, the judgment of a Cty. Ct. in an Admiralty action, an appeal lies without leave to the C. A. ("*The Dart*," (1893) P. 33.)

Death pending Appeal.—If one of the parties dies after entry of the appeal, the H. C. has jurisdiction to add the legal personal representatives. (*Blakeway* v. *Patteshall*, (1894) 1 Q. B. 247.)

Bankruptcy.—See, as to extending time for complying with Bankruptcy Rule (1886—1890) 132. (*Re Vitoria*, (1894) 1 Q. B. 259.)

Where a judge of the H. C. refuses to extend the time for advertising a receiving order the appeal should be to a Div. Ct. constituted to hear appeals from Cty. Cts. in bankruptcy matters. (*Re Dunhill*, (1894) 2 Q. B. 554.)

Action remitted to County Court.—All remitted actions become, after the plaintiff has lodged the original writ and order with the Registrar of the County Court (*D'Errico* v. *Samuel*, (1896) 1 Q. B. 163), County Court actions for all purposes, and are subject to the same provisions as to new trial and appeal as other actions. See Cty. Cts. Act, 1888, ss. 65, 66, *post*.

Workmen's Compensation Act, 1897.—See this (n.), p. 431.

Prohibition to County Court.—Application for writ of prohibition to County Court refused by Judge of High Court. The appeal is to a Divisional Court. (*Watson* v. *Petts*, (1899) 1 Q. B. 54 (C. A.); *Sweetland* v. *Turkish, &c., Co.*, 47 W. R. 511.)

"**Inferior Courts.**"—See County Courts Act, 1888, s. 187, cited s. 67 (n.), *infra*, p. 445. As to rule making authority, J. A. 1875, s. 15; J. A. 1884, ss. 23, 24, *infra*.

Rules as to hearing and entering Appeals, &c.—See O. 59, rr. 4, 10—18.

Counsel.—Only one counsel will be heard on each side on appeal from inferior courts. (*Hawes* v. *Peake*, 24 W. R. 407.)

Mayor's Court.—Appeals from Lord Mayor's Court are within this section. (*Appleford* v. *Judkins*, 3 C. P. D. 489.) But if there is error on the face of the proceedings, then the appeal is to the C. A. in place of Ex. Chamber: see s. 18, *ante*, sub-s. 4. (*Le Blanch* v. *Reuter*, 1 Ex. D. 408; *Pryor* v. *City Offices Co.*, 10 Q. B. D. 504; *Hall* v. *Lawnspach*, (1898) 1 Q. B. 513.)

Liverpool Court of Passage.—The appeal is direct to the C. A. See this (n.), s. 19, p. 396.

Vice-Chancellor's Court, Oxford.—By Order in Council, 23 Aug. 1894, the enactments and R. S. C. relating to appeals from Cty. Cts., see *supra* and O. 59, rr. 10—17, are to apply to this Ct.

"**Passing of this Act.**"—See s. 2 (n.), p. 385.

"**Whose Jurisdiction is by this Act transferred.**"—See s. 16, p. 388.

"**By Divisional Courts.**"—(O. 59.) As to their constitution, s. 40; App. Jur. Act, 1876, s. 17; J. A. 1884, s. 4. Every judge of the H. C. for the time being shall be a judge to hear and determine appeals from inferior courts under this section, see O. 59, r. 4. As to matter to be heard by, ss. 40, 41; O. 59; J. A. 1894, s. 1 (5), p. 519. See (n.) "All appeals," p. 431.

Appeal from Judges of C. A. sitting as Divisional Court.—See *Yarmouth* v. *France*, 4 Times Rep. 561.

Sittings.—As to rules for regulating sittings, see J. A. 1875, s. 17.

Vacation Judge Sitting as Divisional Court.—*Semble*, there is no appeal from a judge so sitting to a Div. Ct., *Re* "*The Young, Duchess*," 8 Times Rep. 41.

Special Divisional Court.—See *Kruse* v. *Johnson*, (1898) 2 Q. B. p. 102.

"**Rules of Court.**"—For rules as to appeals from inferior courts, O. 59, rr. 10—17. Cf. also J. A. 1875, s. 15, p. 467.

"**Shall be final.**"—See (n.) App. Jur. Act, 1876, s. 20, p. 483, *infra*.

"**Unless Special Leave,**" **&c.**—"The meaning of *this section was* to confine the power to give leave to appeal absolutely to Div. Cts." *Per* Esher, M.R., *Kay* v. *Briggs*, 22 Q. B. D. 343. But leave is now required of the Div. Ct. *or* of the C. A. (J. A. 1894, s. 1, 5, p. 519), and if the Div. Ct. refuse the C. A. may grant, see J. A. 1894, s. 1 (5), (n.) "Or by the C. A.," p. 520.

When leave will be granted.—Where the question is one of principle, and has been decided for the first time, leave should be given. (*Ex p. Gilchrist*, 17 Q. B. D., p. 528; and cf. *Bradley* v. *Baylis*, 8 Q. B. D. 195.)

Application for Leave.—Leave should be applied for "*ex parte*," J. A. 1894, s. 1 (6), p. 520. But any application for stay of execution or extension of time or other matter relating to appeal, should be on notice. (*Briton Medical Association* v. *Asher*, 35 Sol. Jo. 262.)

App. Jur. Act, 1876, *s.* 20.—An appeal lies, if special leave to appeal is given hereunder (s. 45), notwithstanding the App. Jur. Act, 1876, s. 20, p. 483.

Original Jurisdiction.—Leave not required.—No leave is required when the Div. Ct. is exercising its *original jurisdiction*. See *Illingworth* v. *Bulmer, &c.*, 32 W. R. 450: *Morgan* v. *Rees*, 6 Q. B. D., p. 511; *Reg.* v. *Savin*, 6 Q. B. D. 309; and see s. 19 (n.) "Special Case," *supra*, p. 397.

46. Subject to any rules of court, any judge of the High Court, sitting in the exercise of its jurisdiction elsewhere than in a Divisional Court, may reserve any case, or any point in a case, for the consideration of a Divisional Court, or may direct any case, or

Cases and points may be reserved for or directed to be

Jud. Act, 1873, ss. 46, 47.

point in a case, to be argued before a Divisional Court; and any Divisional Court of the High Court shall have power to hear and determine any such case or point so reserved or so directed to be argued.

argued before Divisional Courts.

This section is repealed by App. Jur. Act, 1876, s. 17, so far as it is inconsistent with that section. Cf. (n.) "Repeal," s. 41. It is amended and extended by J. A. 1875, s. 22. Summonses in respect of practice or procedure should not now be referred, see J. A. 1894, s. 1. (4), (n.) "To the C. A.," p. 519.

Provision for Crown cases reserved.

47. The jurisdiction and authorities in relation to questions of law arising in criminal trials which are now vested in the justices of either bench and the barons of the Exchequer by the Act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter seventy-eight, intituled "An Act for the further amendment of the administration of the Criminal Law," or any Act amending the same, shall and may be exercised by the judges of the High Court. The determination of any such question by the judges of the High Court in manner aforesaid shall be final and without appeal; and no appeal shall lie from any judgment of the High Court in any criminal cause or matter, save for some error of law apparent upon the record, as to which no question shall have been reserved for the consideration of the said Judges under the said Act of the eleventh and twelfth years of her Majesty's reign.

Cross References.—As to the number of judges who are to exercise this jurisdiction, J. A. 1881, s. 15, *infra*. As to practice and procedure in all criminal causes and matters, J. A. 1875, s. 19; O. 68, r. 1.

"**By the Act**" **(11 & 12 Vict. c. 78).**—As to the quorum in the Court of Criminal Appeal, see J. A. 1881, s. 15, p. 495.

"**No Appeal shall lie from any Judgment.**"—This section does not apply to appeals from Chambers, *Ex p. Pulbrook*, (1892) 1 Q. B., p. 90; but there is no appeal from the order of a judge allowing a prosecution for libel. This word (judgment) is used here in a broad sense. (Bowen, L.J., in *Reg.* v. *Rudge*, 2 Times Rep. 243.) See *Burnett* v. *Berry*, cited (n.) "Save for some error," p. 437, *infra*.

Special Divisional Court.—Although there is no appeal, a special Divisional Court may be appointed by the L. C. J. to review a decision. (*Kruse* v. *Johnson*, (1898) 2 Q. B., p. 102.)

"**In any Criminal Cause or Matter.**"—"These words should receive the widest interpretation. The intention was that no appeal should lie in any 'criminal matter' in the widest sense of the term, the Court (the C. A.) being constituted for the purpose of hearing appeals in civil causes and matters." "The clause applies to a decision by way of judicial determination of any question raised *in or with regard* to proceedings, the subject matter of which is criminal, at *whatever stage of the proceedings*, the question arises." Per Lord Esher, *Ex p. Woodhall*, 20 Q. B. D., pp. 835, 836; *Ex p. Schofield*; *Payne* v. *Wright*, *infra*, and see *Reg.* v. *Barnardo*, 23 Q. B. D., p. 308; *Reg.* v. *Young*, 66 L. T. 16; *Ex p. Pulbrook*, (1892) 1 Q. B. 86. "The question is not whether the proceeding *must*, but whether it *may* end in imprisonment." (*Seaman* v. *Burley*, (1896) 2 Q. B., p. 347; and see *Derby Corp.* v. *Derby C. C.*, (1897) A. C., p. 552; *A.-G.* v. *Kissane*, *infra*.)

Cases in which no appeal lies.

From the order of the Court to tax costs of judgment in a criminal information for libel, such order being part of the procedure in

Jud. Act, 1873, s. 47.

such matter. (*Reg.* v. *Steel*, 2 Q. B. D. 37; *Ex p. Pulbrook, supra.*) From order of Div. Ct. discharging a rule nisi for a mandamus to justices to compel them to hear a summons under the Weights and Measures Act, 1878. (*Reg.* v. *Young*, 66 L. T. 16.) From refusal of H. C. to grant mandamus to magistrate to state a case under Public Health Act. (*Ex p. Schofield*; *Reg.* v. *Tyler*, *infra.*) From decision of Q. B. D. discharging rule for certiorari to bring up a summary conviction (*Reg.* v. *Fletcher*, 2 Q. B. D. 43), or to remove an order for restitution of stolen property. (*Reg.* v. *Justices of C. C. Ct.*, 18 Q. B. D. 314.) From refusal to grant certiorari for removal of indictment of murder. (*Reg.* v. *Rudge*, 16 Q. B. D. 459.) From judgment of C. A., of Inferior Courts (see s. 45) on appeal from conviction for keeping common gaming-house. (*Blake* v. *Beech*, 2 Ex. D. 335.) See also (n.) "Contempt of Court," &c., *infra*.

Disobedience to an Act of Parliament if punishable by a *penalty* inflicted by way of punishment, and not as compensation for the breach (see *Reg.* v. *Kerswill*, (1895) 1 Q. B. 1), is a criminal offence; and as to the effect of the Summary Jurisdiction Act, 1879, on penalties, cf. *Re Gamble*, (1899) 1 Q. B. 305. Therefore a decision of the H. C. upon a case stated by justices as to an information for contravening a bye-law made under the Elementary Education Act is not appealable. (*Mellor* v. *Denham*, 5 Q. B. D. 467.) Orders made under Public Health Act, 1875, ss. 91, 96, for such orders may be enforced by penalty, although an alternative remedy is given. (*Reg.* v. *Whitchurch*, 7 Q. B. D. 534; *Reg.* v. *Parlby*, 6 Times R. 36; *Ex p. Schofield*, (1891) 2 Q. B. 428) which was an appeal from refusal of Q. B. D. to compel a case to be stated under the Act.) See also *Reg.* v. *Buxendale*, 6 Q. B. D. 144 (n.), which was a conviction under the Weights and Measures Act; *Reg.* v. *Tyler*, *&c.*, (1891) 2 Q. B. 588, which was a proceeding to recover penalties under Companies Act, 1862, ss. 25, 27; *Reg.* v. *Young*, 66 L. T. 16, which was a summons for having unjust measures; *Mayor, &c., Southport* v. *Urban D. C., Birkdale*, 76 L. T. 318, conviction for not supplying gas as provided by an Act; *Payne* v. *Wright*, 66 L. T. 148, which was an appeal against order of Div. Ct. remitting a summons under Metropolitan Building Act to magistrates.

Proceedings taken in Q. B. D. to quash a conviction obtained before justices, or to compel them to state a case, &c., &c., are considered as being raised "in or *with regard to* proceedings the subject-matter of which is criminal." (*Ex p. Schofield, supra*, following *Ex p. Woodhall, supra*; and see *Kruse* v. *Johnson*, (1898) 2 Q. B., p. 102.) So where, under a local Act for enforcement of *poor-rates* by warrant of distress, justices granted a warrant subject to a case, and the Div. Ct. affirmed their order, no appeal lay, for the proceedings before the justices *might* on default have ended in imprisonment. (*Seaman* v. *Burley*, (1896) 2 Q. B. 344; distinguished in *Southwark, &c., Water Co.* v. *Hampton Urban D. C.*, (1899) 1 Q. B. p. 276; cf. (n.) "Cases in which an appeal lies," p. 436, *infra.*)

Bail.—No appeal lies on a refusal of bail on indictment for misdemeanor. (*Reg.* v. *Foote*, 10 Q. B. D. 378.)

Habeas Corpus.—If the writ is sued out in "a criminal cause or matter," no *appeal* will lie, either from a refusal to grant the writ, or from an order discharging from custody. (*Cox* v. *Hakes*, 15 App. Cas., pp. 523, 528.) Nor from a decision of the Q. B. D. refusing a *habeas corpus* on the application of a person in custody for an alleged crime under the Extradition Act, *Ex p. Alice Woodhall*, 20 Q. B. D. 832; *Reg.* v. *Weil*, 9 Q. B. D. 701. See this (n.), p. 437, *infra.*

Contempt of Court.—Attachment.—There are two kinds of attachment

Jud. Act, 1873, s. 47.

for contempt. One to enforce obedience to orders made in civil actions, in respect of something the doing or not doing of which is *not* a criminal act (*Reg.* v. *Barnardo*, 23 Q. B. D. 305), although it may involve a breach of discipline by an officer of the court. (*Re Freston*, 11 Q. B. D. 545 (but see the remarks of Lindley, L.J., in *Re Evans*, (1893) 1 Ch., p. 266, on this case and on *Harvey* v. *H.*, 26 C. D., p. 651) ; *Re Dudley*, 12 Q. B. D. 44 ; *Re Hardwick*, 12 Q. B. D. 148 ; *Re Wray*, 36 C. D. 138 ; *Re Johnson*, 20 Q. B. D. 68 ; *Godfrey* v. *George*, (1896) 1 Q. B. 48 ; *Re Evans*, (1893) 1 Ch. 252 ; *Re a Special Reference from Bahamas*, (1893) A. C., p. 146.)

In such cases an appeal lies, and see (nn.) "Bankruptcy," "Habeas Corpus," p. 437, *infra*.

But there is another kind of attachment, which is the subject of an independent application against a person in respect of an act done outside the suit, and which act *is criminal*, although perhaps not indictable. Therefore where a person does something to prevent the course of justice, as, for instance, by publishing comments which might prejudice the fair trial of the action, no appeal lies. (*O'Shea* v. *O'Shea*, 15 P. D. 59 ; *Fenner* v. *Wilson*, 9 Times Rep. 496 ; *Lewis* v. *Owen*, (1894) 1 Q. B., p. 106.) Cf. also *Reg.* v. *Jordan*, 36 W. R. 796, and see the remarks of Lindley, L.J., thereon in *O'Shea* v. *O'Shea*, 15 P. D., at p. 64. An order made by the Q. B. D. in Ireland attaching a constable for refusing to aid the sheriff in the execution of a writ is a judgment in a "criminal cause or matter" from which no appeal lies, *A.-G.* v. *Kissane*, 32 L. R. Ir. p. 220.

Notice of Motion.—In *O'Shea* v. *O'Shea*, the motion was headed in the action, and "In the matter of an application," &c., and it was held (see judgment of Cotton, L.J., 15 P. D. 62) that the essential part of the motion was to commit for contempt, and was outside the divorce action, see *A.-G.* v. *Kissane*, 32 L. R. Ir., p. 264.

Cases in which an appeal lies.

From a decision of the Q. B. D. discharging a rule *nisi* for a mandamus directing commissioners to grant a certificate of indemnity under Corrupt Practices Prevention Act. (*Reg.* v. *Holl*, 7 Q. B. D. 575.) From the refusal of the same Ct. to make an order under s. 20 of the Municipal Elections Act, 1884, exempting a candidate from a penalty. (*Re* Local Gov. Act, 1888 ; *Ex p. Walker*, 22 Q. B. D. 384.) On an information by the A.-G. to recover penalties. (*A.-G.* v. *Bradlaugh*, 14 Q. B. D. 667, see the judgments in that case, and compare with that in *Ex p. Schofield*, (1891) 2 Q. B., p. 430.) From an order by a justice for repair of a highway, for disobedience to the order does not result in fine or imprisonment ; compare *Seaman* v. *Burley*, (1896) 2 Q. B. 344 ; *Highway Board of Loughborough* v. *Curzon*, 17 Q. B. D. 344. Although a sum is according to an Act recoverable *as a penalty*, that does not turn the non-payment of it into an offence, if on the true construction of the Act, it is a civil debt. (*Reg.* v. *Kerswill*, (1895) 1 Q. B., p. 7 ; cf. *Seaman* v. *Burley*, (1896) 2 Q. B. 344.) From judgment on case stated by justices to enforce payment of *general district rate* under Public Health Act, 1875, s. 256 (*The Southwark, &c. Co.* v. *The Hampton Urban D. C.*, (1899) 1 Q. B. 273), distinguishing *Seaman* v. *Burley*. A proceeding under the River Pollution Act, 1876, which can only end in an order, which order being disobeyed, may result in a penalty, is a *civil* proceeding. (*Derby Corpn.* v. *Derbyshire C. C.*, (1897) A. C. 550.) An order for maintenance of parents, under 43 Eliz. c. 2, s. 6, is now recoverable as a civil debt, not as a penalty. (*Re Gamble*, (1899) 1 Q. B. 305.)

Bankruptcy.—As in Bankruptcy matters all orders are appealable at the instance of every person aggrieved, Bankruptcy Act, 1883, s. 104 (2); a bankrupt committed for contempt under s. 24, s.s. 4 of that Act, may appeal, *Ex p. Ashwin*, 25 Q. B. D. 271.

Habeas Corpus.—An insufficient return to a writ of *habeas corpus* is a contempt of Court, and an order for attachment thereon is appealable. (*Reg.* v. *Barnardo*, 23 Q. B. D. 305.) As to appeals from Habeas Corpus in civil matters, see this note, s. 19, pp. 395, 396, *supra*.

Solicitors.—The jurisdiction over solicitors is disciplinary, and is not a criminal matter. Therefore if a solicitor is struck off the rolls an appeal lies (*Re Hardwick*, 12 Q. B. D. 148); and an appeal lies in cases under Sol. Act, 1843, s. 42. (*Re Eede*, 25 Q. B. D. 228: cf. the Solicitors Act, 1899.)

Ecclesiastical Offences.—Contempt and contumacy are not criminal matters within this section. (*Dale's Case*, 6 Q. B. D., p. 474; *Cox* v. *Hakes*, 15 App. Ca. 506.)

Contempt of Court.—Attachment.—See this (n.), pp. 435, 436, *supra*.

Revenue Cases.—It is doubtful whether an appeal lies in applications for penalties in revenue cases. (*Howes* v. *Inland R. B.*, 1 Ex. D. 385; *A.-G.* v. *Moore*, 3 Ex. D. 276; cf. *A.-G.* v. *Radloff*, 10 Ex. 84.)

Civil Proceedings on Crown Side Q. B. D.—All such proceedings, including Mandamus, Prohibition, and Quo Warranto, are governed by the Crown Office Rules, 1886; and by r. 216 thereof, O. 58 is to apply to all *civil* proceedings therein: cf. O. 68, r. 2 (n.).

Quo Warranto.—Proceedings in are to be deemed civil for all purposes, J. A. 1884, s. 15, and O. 58 is to apply to such proceedings, see note to O. 68, r. 2. As to the Irish practice, see *Reg.* v. *Runciman*, 28 L. R. Ir. 550.

"**Save for some Error in Law,**" &c. — Bills of exceptions and proceedings in error were abolished by O. 58, r. 1 (1875). This saving applies to the case in which there was a record of a conviction, with error apparent on the face of the record, and in which there was, under the old practice, an appeal to the Court of Exchequer Chamber. (*Burnett* v. *Berry*, 12 Times Rep. 464.) And see, as to practice, Crown Office Rules, 1886, 183; App. Jur. Act, 1876, ss. 10, 11. A writ of error lies to a Div. Court (*Taylor* v. *Reg.*, (1895) 1 Q. B. 25; *Richards* v. *Reg.*, 13 Times Rep. 254); and an appeal lies to the C. A. (*Bradlaugh* v. *Reg.*, 3 Q. B. D. 607; *O'Brien* v. *Reg.*, 26 L. R. Ir. 451: and to H. of Lords, App. Jur. Act, 1876, ss. 10, 11.

48. [Motions for New Trials, rep. J. A. 1875, s. 33.]

See J. A. 1890, p. 508.

49. No order made by the High Court or any judge thereof, by the consent of parties, or as to costs only, which by law are left to the discretion of the court, shall be subject to any appeal, except by leave of the court or judge making such order.

What order shall not be subject to appeal.

This section is perfectly general, and applies to the P. D. & A. Division notwithstanding O. 68, r. 1. *Butler* v. *B.*, 15 P. D. 126; *Russell* v. *R.*, (1892) P., p. 157.)

"**No Order made by the H. C.**"—By the Lunacy Act, 1890, s. 109, an order for costs "shall have the *effect* of an order of the High Court." But this does not make it an *order* of the H. C. so as to bring it within this section. (*Re Catheart*, (1893) 1 Ch. 466.)

"**Any Judge.**" — This section does not include orders made by a Dis. Reg. (O. 35, r. 9) (*Foster* v. *Edwards*, 48 L. J. Q. B. 767);

Jud. Act, 1873, ss. 49, 50.

nor, *semble*, by a Master or Registrar. (*Bryant* v. *Reading*, 17 Q. B. D., p. 131.)

Official Referee.—Where the costs of proceedings are in the discretion of the O. R. he is in the position of a judge, and there is no appeal. (*Arbib* v. *Henry*, 99 L. T. Jo. 283.)

"**By Consent of Parties.**"—To constitute consent, there must be a bargain between the parties, not mere acceptance by the appellant of an order offered by the court, *Aldam* v. *Brown*, W. N. (90) 116; *Hadida* v. *Fordham*, 10 Times Rep. 139. Cf. also (n.) "Judgment by consent," Additional Notes, Pt. IV., p. 340.

"**As to Costs only.**"—See O. 65, r. 1, (n.) "Appeal as to Costs."

"**Left to the discretion of the Court.**"—See (n.) "Shall be in," &c., J. A. 1890, s. 5, p. 512, and O. 65, r. 1, (n.) "In the Discretion of the Court."

"**Except by Leave.**"—If the judge does give leave hereunder to appeal against his order as to costs, such order is discretionary, and must be treated as the order of a judge who has better means of knowing the circumstances than the C. A., and it will not be overruled unless the discretion has been exercised *on a wrong principle* or on a mistake as to facts. (*Re Gilbert*, 28 C. D. 549; *Robertson* v. *R.*, 6 P. D. 119; and cf. *Huxley* v. *W. L. Extension, &c.*, 17 Q. B. D. 373; *Russell* v. *R.*, (1892) P. 152; *Young* v. *Thomas*, (1892) 2 Ch 134.) Without such leave no appeal will be entertained, although the judge has followed a practice which the C. A. could not understand; and the leave of the C. A. to appeal is not sufficient. (*Adlington* v. *Conyngham*, (1898) 2 Q. B. 492 (C. A.); *Utal* v. *May*, 15 Times Rep. 307.) As to an appeal from a refusal to give leave, see J. A. 1894, s. 1 (b), (n.) "Without the leave," p. 517.

Leave probably should be given as under s. 45. See (n.) thereto, "When leave will be granted," p. 433. It should be asked for by defendant on dismissal of action without costs, and will not be given when plaintiff has set down an appeal from dismissal. (*May* v. *Thompson*, W. N. (82) 53.)

As to discharging orders made in Chambers.

50. Every order made by a judge of the High Court in Chambers, except orders made in the exercise of such discretion as aforesaid, may be set aside or discharged upon notice by any Divisional Court, or by the judge sitting in court, according to the course and practice of the division of the High Court to which the particular cause or matter in which such order is made may be assigned; and no appeal shall lie from any such order, to set aside or discharge which no such motion has been made, unless by special leave of the judge by whom such order was made, or of the Court of Appeal.

Cross References.—Appeals to C. A., s. 19, and O. 58; to Divisional Court, s. 45, and O. 59. Jurisdiction in Chambers, s. 39. Drawing up of orders in, O. 55, r. 74. Practice in Q. B. D. Chambers, O. 54. In C. D. Chambers, O. 55. Appeals in matters of practice and procedure, J. A. 1894, s. 1 (n.), s.s. 4, p. 519.

"**Every Order . . . except, &c.**"

Order on further Consideration.—An order on further consideration made in chambers can be varied on an adjourned summons. (*Davey* v. *Ward*, 7 C. D. 754.)

Interlocutory Judgment or Orders.—Appeals from, with certain exceptions, must now be made on leave of judge or C. A., J. A. 1894, s. 1 (1) b, p. 517.

Matters of Procedure and Practice.—The appeal in such matters is direct to C. A., J. A. 1894, s. 1 (4), p. 519.

Order extending Time.—No appeal from, J. A. 1894, s. 1 (1) a, p. 517.

Unconditional Leave to Defend.—An appeal lies without leave to C. A. from order refusing such leave, *Ibid.* (3), p. 518.

Interpleader Order.—See O. 57, r. 11 (n.).

Libel.—Criminal Cause or Matter.—This section does not apply to criminal or quasi-criminal matters; see *Ex p. Pulbrook*, (1892) 1 Q. B. 86, O. 68, r. 1.

"Made by a Judge."—All orders made in chambers in the C. D. are deemed to be orders of the judge; see O. 55, r. 15, (n.) "Chief Clerks."

"May be set aside or discharged."

Appeals from Master, Registrar, and District Registrar.—In Q. B. D. the appeal from an order made by a master is to a judge in chambers (within 4 days) by indorsement on the summons or by notice of appeal (O. 54, r. 21), and the summons may be adjourned into Court (O. 54, r. 9).

The same practice maintains as to the time for appeals from orders of registrars in P. D. (*In the goods of Patrick*, 14 P. D. 42.) As to appeals from district registrars, see O. 35, r. 9.

Appeal from Judge in Chambers.—The appeal from a judge in Chambers in the Q. B. D., except in matters of "practice and procedure," is to a Divisional Court by motion (see O 54, rr. 23, 24; J. A. 1894, s. 1 (5), p. 519); and in such matters is to the C. A. (J. A. 1894, s. 1 (4), p. 519).

In the C. D., if the judge himself decides the matter in chambers, a motion must, unless a certificate be given, be made to him in Court to discharge such order. (*Re Pearce*, W. N. (99) 114 (C. A.); *Holloway* v. *Cheston*, 19 C. D. 516; *Re Rouse*, 59 L. T. 887.) But this is a rehearing, *not an appeal*, see (n.) "Rehearing," *infra*. In some chambers if the parties have been represented by counsel the Judge will not require the case to be re-argued before himself in Court, but will give a certificate to that effect (which is prepared and signed by the Master), and the parties go directly to C. A. (*A.-G.* v. *Llewellyn*, 58 L. T. 367; *Re Somerville*, 56 L. T. 424.) Where parties do not intend to accept the decision in chambers as final, they should ask to have the summons adjourned into Court at once. (*Forrester* v. *Jones*, W. N. (99) 78.)

Judicature Act, 1894, *s.* 1.—This Act does not affect the right in the C. D. (1) to move to discharge, (2) to have the matter adjourned into Court, (3) to go on certificate to the C. A. (*Boake* v. *Stevenson*, (1895) 1 Ch. 358; *Black* v. *Dawson*, (1895) 1 Q. B. 848.) Cf. *Re Pearce*, cited *infra*. (n.) "By special leave."

Raising point on Appeal not raised in Chambers.—The Judge's certificate means that the matter has been sufficiently argued before him. If therefore a new point is introduced on appeal the certificate does not extend to it, and the C. A. will not entertain it. (*Thomson* v. *Hughes*, W. N. (89) 212.)

P. D. & A. Division.—The practice in the P. D. & A. Div. is the same as in the C. D. (*Re Smith. Rigg* v. *Hughes*, 9 P. D. 68.)

Evidence.—Cross-examination.—(O. 38, r. 1.) The order for cross-examination should not, as a general rule, be allowed to go until the evidence is complete, and no fresh evidence is afterwards allowed to be filed without leave. (*Muir* v. *Kirby*, 32 Sol. Jo. 139; *Re Davies*, 44 C. D. 253 (C. A.).)

Further Evidence.—In C. D. on motion to discharge an order made in Chambers no other evidence than that used in Chambers will be admitted. If the judge declines to discharge the order the applicant may go to C. A., which would have power to admit further evidence (*Re Rouse*, 59 L. T. 887; *Re Munns*, 32 W. R. 675; but see *Re Chifferiel*, 36 W. R. 806). In *Re Marsden*, 40 C. D., p. 479, an affidavit filed (*semble*) when the matter came before

Jud. Act, 1873, s. 50.

the judge in Chambers, but not tendered to him, was not allowed to be read on the adjournment into Court.

Rules 25 to 28 of O. 38 apply by analogy to regulate the practice in Chambers, therefore where a deponent has been cross-examined upon his accounts in Chambers, further evidence will not be allowed to be adduced unless there are special grounds for so doing. (*Re Davies*, 44 C. D. 253.)

In the Q. B. D. a Divisional Court on an appeal from Chambers, will, as a matter of convenience, allow a new affidavit, made since the date of the order in Chambers, to be read. (*Robinson* v. *Bradshaw*, 32 W. R. 95.)

Evidence of what took place in Chambers.—No affidavit is admissible, but a note of the Registrar or Master should be obtained. (*Sykes* v. *S.*, (1897) P. 306.)

Rehearing.—Before judgment is drawn up the Court may rehear a case. (*Baden Powell* v. *Wilson*, W. N. (94), 146.) A motion before the Judge in Court to discharge an order made in Chambers is in the C. D. a *rehearing*, not an *appeal* (*Re Giles* (1890), 43 C. D., p. 395), and is not affected by J. A. 1894, s. 1, p. 517, *infra*. (*Boake* v. *Stevenson*, cited *supra*.) See further *Re Gray*, 36 C. D., p. 212.

Time for Appealing.—The time for moving before *a judge in court* to discharge an *interlocutory order* made in Chambers would, in the opinion of the C. A., and by analogy to O. 58, r. 15, be reasonably fixed at 14 days, but the discretion of the judge should not be fettered. (*Heatley* v. *Newton*, 19 C. D. 326; *Re Hardwidge*, 52 L. T. 40; *Re Lewis*, 31 C. D. 623; *Re Norwich Equitable*, 33 W. R. 270.) And if the order is a *final order*, it seems no longer time should be given. *Per* Kay, J., *Re Johnson*, 42 C. D. 505, approved by C. A., *Re Giles*, 43 C. D. 391. Following the like analogy, the period will be reckoned from the time the order was pronounced, or when the applicant first had notice thereof. (*Re Woodbridge*, W. N. (84) 187.)

Appeal from Judge in Chambers to Div. Ct.—By the joint effect of O. 52, r. 5, and O. 54, r. 24, notice of appeal from a judge in Chambers must be given *within* 5 *days* of the decision. (*Steedman* v. *Hakim*, 22 Q. B. D. 16; *Scott* v. *Constantinidi*, 26 L. J. N. of C. 167.)

"According to the course," &c.—The appeal is to be regulated by the course and practice prevailing *not in any individual branch* of any Division of the H. Ct., but in the Div. to which the cause is assigned. (*Heatley* v. *Newton*, 19 C. D. 326.)

These words are inapplicable to criminal proceedings. (*Ex p. Pulbrook*, (1892) 1 Q. B., p. 90.)

"Such Motion."—These words are inaccurate, they refer to what is implied by the words "may be set aside or discharged," Brett, L.J. (*Dickson* v. *Harrison*, 9 C. D. 243.)

Appeals to the Court of Appeal.

In *Re Pearce*, W. N. (99) 114, the judge dismissed an originating summons, and declined to give a certificate that the matter had been sufficiently argued before him. On motion *ex parte* to the C. A. for leave to appeal, no motion having been made to discharge the order, the C. A. held that the settled practice was, that unless the judge gives a certificate, the person who desires to appeal must move in Court to discharge the order made in Chambers.

In C. D.—See (n.) "Appeal from Chambers," *supra*.

There may possibly still be circumstances which make it proper that the decision, although made in Chambers, should go at once to the C. A. as in *James* v. *Plummer*, 9 Times Rep. 306, where the judge in Chambers had decided what the effect of a *final* judgment given by him really was.

In Q. B. D.—In matters of procedure and practice (see (n.), p. 519) the appeal is to the C. A.

In both Divisions leave is now required in *appeals* from interlocutory judgments and orders, except in certain cases, J. A. 1894, s. 1 (1) (b), p. 517. The application is *ex parte*, *Ibid.*, s. 1 (5) (n.), p. 520.

Provision for absence or vacancy in the office of a Judge.

51. Upon the request of the Lord Chancellor, it shall be lawful for any judge of the Court of Appeal, who may consent so to do, to sit and act as a judge of the High Court or to perform any other official or ministerial acts for or on behalf of any judge absent from illness or any other cause, or in the place of any judge whose office has become vacant, or as an additional judge of any division; and while so sitting and acting any such judge of the Court of Appeal shall have all the power and authority of a judge of the High Court.

Cross References.—Judge of H. C. may be requested to sit in C. A.; J. A. 1875, s. 4. Power of one Judge of H. C. to sit for another; J. A. 1881, s. 12; J. A. 1884, ss. 5, 6; O. 49, r. 4. As to ex-Chancellor's sitting by request in C. A. see J. A. (91), s. 1, *infra*.

"**Request of Lord Chancellor.**"—The following letter of request, dated 10th Nov., 1875, was addressed by the L.C. to the L.JJ.: "As it is convenient that orders should continue to be made in Chancery as well as in Lunacy, I have to request you to act as an additional Judge of the Chancery Division of the H. C. of Justice, for the purpose of making such orders." (*Re Platt*, 36 C. D. 410.) As to lunacy, see Lunacy Act, 1890, s. 108. The above letter is general in its terms, and applies to all applications in Lunacy which require also an exercise of the jurisdiction of the C. D. (*Re Platt*, *supra*; *Re Blake*, 72 L. T. 280; cf. *Re Barber*, 39 C. D. 187.) Cf. O. 16, r. 17, (n.) "Jurisdiction in Lunacy," Vol. I., p. 173.

"**Perform any . . . official . . . act,**" **&c.**—See J. A. 1881, s. 12. Before a judge of the C. A. can act as a judge of the H. C., the request of the L. C. is necessary. (*Chapman* v. *Real, &c., Trust*, 7 C. D. 732.)

Power of a single Judge in Court of Appeal.

52. In any cause or matter pending before the Court of Appeal, any direction incidental thereto, not involving the decision of the appeal, may be given by a single judge of the Court of Appeal; and a single judge of the Court of Appeal may at any time during vacation make any interim order to prevent prejudice to the claims of any parties pending an appeal as he may think fit; but every such order made by a single judge may be discharged or varied by the Court of Appeal or a divisional court thereof.

Cross References.—*Appeals.*—O. 58. As to making Rules of Court for the hearing of matters in vacation, s. 28, *supra*.

Vacation Judge of High Court.—S. 28, *supra*, and O. 63, rr. 11, 12, 13.

Vacation Judge of C. A.—Notwithstanding s. 28, *ante*, no rules for the hearing of appeals by C. A. in vacation have been made under that section.

"**Matter pending.**"—Until an appeal is brought there is nothing "pending" before the C. A. *Per* Mellish, L.J., *Sugden* v. *St. Leonards*, 1 P. D., p. 209. A single judge has no jurisdiction hereunder until an appeal has been presented. The proper course seems to be in the first place to serve notice of appeal, which will be for a day in vacation, or so soon thereafter, &c. (see *Re Coulton*, 34 C. D. 22), and then to write to a member of the C. A. asking if and when it will be convenient to him to hear an application under the section. (See *Re Tussaud*, 31 Sol. Jo. 703, and see also some remarks of Kay, L. J., referred to 36 Sol. Jo., p. 22.)

Jud. Act, 1873, ss. 52—59.

Pending Appeal.—Interlocutory Injunction.—Motion by plaintiff on 21st Dec., to restrain building operations, application refused. This was the last day before Christmas vacation. The next day the plaintiff gave notice of appeal, but before the appeal came on the building was finished. The C. A. said the appeal was useless, plaintiff should have applied hereunder; appeal ordered to stand until after trial of action. (*Johnstone* v. *Royal Courts, &c. Co.*, W. N. (83) 5.)

"**By a single Judge.**"—An application to adduce fresh evidence at the hearing, may in an appeal to a Divisional Court, by virtue of O. 59, r. 17, be made to a single judge of P. D. and A. Div. (*The Eclipse*, 14 P. D. 71.)

"**May be Discharged,**" **&c.**—Power to make application hereunder is not affected by J. A. 1894, s. 1 (1) (b), and leave is not necessary. (*Boyd* v. *Bischofscheim*, (1895) 1 Ch. 1.)

53. [As to Div. Cts. of Appeal, is repealed by Judicature Act, 1875, s. 33; and see Judicature Act, 1875, s. 12, *post.*]

54. [Judges not to sit on appeal from their own judgments. See J. A. 1875, s. 4, and J. A. 1881, s. 11.]

55. [As to arrangements for business of C. A., &c., was suspended by J. A. 1875, s. 2. Repealed by App. Juris. Act, 1876, s. 24, and see s. 16 of that Act.]

PART IV.

Trial and Procedure.

Assessors.

56. The High Court or the Court of Appeal may also, in any such cause or matter as aforesaid in which it may think it expedient so to do, call in the aid of one or more assessors specially qualified, and try and hear such cause or matter wholly or partially with the assistance of such assessors. The remuneration, if any, to be paid to such assessors shall be determined by the court.

As repealed from the 1st Jan. 1890, by schedule 2 of the Arbitration Act, 1889, *post.*

Cross References.—As to assessors, O. 36, rr. 7, 43. As to right to jury, see O. 36, rr. 3—6. As to references to official and special referees, O. 36, rr. 45—53.

Power to direct trials before referees.

57. [The whole of this section is repealed, as and from the 1st Jan. 1890, by schedule 2 of the Arbitration Act, 1889, printed *post.* See s. 14 of the Act.

Power of referees and effect of their findings.

58. [The whole of this section is repealed, as and from the 1st Jan. 1890, by schedule 2 of the Arbitration Act, 1889, printed *post.* See s. 15 (1), (2), thereof, and O. 36, Part 8, r. 52 (n.).]

59. [The whole of this section is repealed, as and from the 1st Jan. 1890, by schedule 2 of the Arbitration Act, 1889, printed *post*. See ss. 16 and 17 thereof.]

Powers of Court with respect to proceedings before referees.

60. It shall be lawful for Her Majesty, by Order in Council, from time to time to direct that there shall be district registrars in such places as shall be in such order mentioned for districts to be thereby defined, from which writs of summons for the commencement of actions in the High Court of Justice may be issued, and in which such proceedings may be taken and recorded as are hereinafter mentioned; and Her Majesty may thereby appoint that any registrar of any county court, or any registrar or prothonotary or district prothonotary of any local court whose jurisdiction is hereby transferred to the said High Court of Justice, or from which an appeal is hereby given to the said Court of Appeal, or any person who, having been a district registrar of the Court of Probate, or of the Admiralty Court, shall under this Act become and be a district registrar of the said High Court of Justice, or who shall hereafter be appointed such district registrar, shall and may be a district registrar of the said High Court for the purpose of issuing such writs as aforesaid, and having such proceedings taken before him as are hereinafter mentioned.

Her Majesty may establish district registries in the country for the Supreme Court.

Cross References.—As to the Practice in District Registries, see O. 35 and notes. Joint District Registrars. J. A. 1875. s. 13. Deputy District Registrars, App. Jur. Act, 1876, s. 22. Solicitor may be, J. A. 1881, s. 22. Rules relating to D. Registries, O. 5, Pt. 1; O. 12. rr. 4—7; O. 35.

This section is amended by J. A. 1875. s. 13.

Orders in Council.—By Orders in Council dated the 12th day of August, 1875, the 11th August. 1884. the 8th Feb. 1890. 15th March. 1893, and the 12th Dec. 1894. &c., District Registrars have been appointed at the following places:—

DISTRICT REGISTRIES OF THE HIGH COURT.

Aberystwith.	Carnarvon.	Hull.
Bangor.	Cheltenham.	Ipswich.
Barnsley.	Chester.	Kendal.
Barnstaple.	Colchester.	King's Lynn.
Barrow-in-Furness.	Derby.	Leeds.
Bath.	Dewsbury.	Leicester.
Bedford.	Dorchester.	Lincoln.
Birkenhead.	Dover.	Liverpool.
Birmingham.	Dudley.	Lowestoft.
Blackburn.	Durham.	Maidstone.
Boston.	East Stonehouse.	Manchester.
Bradford.	Exeter.	Newcastle-upon-Tyne.
Bridgewater.	Glo'ster.	Newport, I. W.
Brighton.	Gt. Grimsby.	Newport, Monmouth.
Bristol.	Gt. Yarmouth.	Newtown.
Bury St. Edmunds.	Halifax.	Northampton.
Cambridge.	Hanley.	Norwich.
Cardiff.	Hartlepool.	Nottingham.
Carlisle.	Hereford.	Oxford.
Carmarthen.	Huddersfield.	Pembroke Docks.

Jud. Act, 1873, ss. 60—64.

DISTRICT REGISTRIES OF THE HIGH COURT—*continued.*

Peterborough.	Southampton.	West Bromwich.
Poole.	Stockton-on-Tees.	Whitehaven.
Portsmouth.	Sunderland.	Winchester.
Preston.	Swansea.	Wolverhampton.
Ramsgate.	Taunton.	Worcester.
Reading.	Totnes.	Wrexham.
Rochester.	Truro.	York.
Sheffield.	Wakefield.	
Shrewsbury.	Walsall.	

Seals of district registries.

61. In every such district registry such seal shall be used as the Lord Chancellor shall from time to time direct, which seal shall be impressed on every writ and other document issued out of or filed in such district registry, and all such writs and documents, and all exemplifications and copies thereof, purporting to be sealed with the seal of any such district registry, shall in all parts of the United Kingdom be received in evidence without further proof thereof.

Sealing writs, see O. 5, r. 11; sealing originating summonses, see O. 54, r. 4B and (n).

Powers of district registrars.

62. All such district registrars shall have power to administer oaths and perform such other duties in respect of any proceedings pending in the High Court or in the said Court of Appeal as may be assigned to them from time to time by Rules of Court, or by any special order of the court.

"**Such other Duties,**" **&c.**—See O. 35, r. 6; O. 54, r. 12.

63. [Which related to fees to be taken by district registrars, is repealed by J. A. 1875, s. 33, schedule 2; see s. 26 thereof.]

Proceedings to be taken in district registries.

64. Subject to the Rules of Court in force for the time being, writs of summons for the commencement of actions in the High Court shall be issued by the district registrars when thereunto required; and unless any order to the contrary shall be made by the High Court, or by any judge thereof, all such further proceedings, including proceedings for the arrest or detention of a ship, her tackle, apparel, furniture, cargo, or freight, as may and ought to be taken by the respective parties to such action in the High Court down to and including entry for trial, or (if the plaintiff is entitled to sign final judgment or to obtain an order for an account by reason of the non-appearance of the defendant) down to and including final judgment, or an order for an account, may be taken before the district registrar, and recorded in the district registry, in such manner as may be prescribed by Rules of Court; and all such other proceedings in any such action as may be prescribed by Rules of Court shall be taken and if necessary may be recorded in the same district registry.

See as to writs, O. 5, r. 1; as to appearance, O. 12, rr. 4 and 6; generally, O. 35, r. 1 (n.); O. 54, r. 12. As to Admiralty cases, O. 29.

Power for Court to remove proceedings from district registries.

65. Any party to an action in which a writ of summons shall have been issued from any such district registry shall be at liberty at any time to apply, in such manner as shall be prescribed by Rules of Court, to the High Court, or to a judge in chambers of the division of the High Court to which the action may be assigned, to remove the proceedings from such district registry into the proper office of the High Court; and the court or judge may, if it be thought fit, grant such application, and in such case the proceedings and such original documents, if any, as may be filed therein shall upon receipt of such order be transmitted by the district registrar to the proper office of the High Court: and the said action shall thenceforth proceed in the High Court in the same manner as if it had been originally commenced by a writ of summons issued out of the proper office in London; or the court or judge, if it be thought right, may thereupon direct that the proceedings may continue to be taken in such district registry.

"**To Remove.**"—O. 35, rr. 13—18; P. M. R. (12), Vol. I., Part II.

Accounts and inquiries may be referred to district registrars.

66. It shall be lawful for the court, or any judge of the division to which any cause or matter pending in the High Court is assigned, if it shall be thought fit, to order that any books or documents may be produced, or any accounts taken or inquiries made, in the office of or by any such district registrar as aforesaid; and in any such case the district registrar shall proceed to carry all such directions into effect in the manner prescribed; and in any case in which any such accounts or inquiries shall have been directed to be taken or made by any district registrar, the report in writing of such district registrar as to the result of such accounts or inquiries may be acted upon by the court, as to the court shall seem fit.

See O. 35, r. 1, Vol. I., p. 443 (n.).

Form of Report.—Should be like a chief clerk's certificate. (*Re Bowen*. 20 C. D. 538.)

Production.—O. 31, rr. 12, 14.

Inquiries and Accounts.—O. 15, r. 1; O. 33.

67. [*This section, which provided that the provisions contained in the fifth, seventh, eighth, and tenth sections of the County Courts Act*, 1867, *should apply to all actions commenced or pending in the said High Court of Justice in which any relief was sought which could be given in a county court, is repealed by S. L. R. Act*, 1898.]

County Court Act, 1888.—The Cty. Cts. Act, 1888, repeals Cty. Cts. Act, 1867; and by s. 187 thereof, it is provided that "any reference in any of the Supreme Court of Judicature Acts and the Statute Law Revision and Civil Procedure Act, 1883, *to an inferior Court*, shall be construed as referring to Courts under the Act as well as to any other inferior Court." As to whether O. 65, r. 12, is to be read as subject to the Cty. Cts. Act and the J. A. 1873, cf. *Millington* v. *Harwood*, (1892) 2 Q. B., p. 171.

"**The Provisions contained in the Fifth,**" **&c.**—The sections in Cty. Cts. Act, 1888, corresponding to those above mentioned, are ss. 116, 65, 69, 66, and are printed, p. 564 *et seq.*

68—74. [Were repealed by J. Act, 1875, s. 33, and ss. 17—21 of that Act substituted therefor.]

Jud. Act, 1873, ss. 75, 76.

Councils of judges to consider procedure and administration.

75. A Council of the judges of the Supreme Court, of which due notice shall be given to all the said judges, shall assemble once at least in every year, on such day or days as shall be fixed by the Lord Chancellor, with the concurrence of the Lord Chief Justice of England, for the purpose of considering the operation of this Act and of the rules of court for the time being in force, and also the working of the several offices and the arrangements relative to the duties of the officers of the said courts respectively, and of inquiring and examining into any defects which may appear to exist in the system of procedure or the administration of the law in the High Court or the Court of Appeal, or in any other court from which any appeal lies to the High Court or any judge thereof, or to the Court of Appeal: and they shall report annually to one of her Majesty's principal secretaries of state what (if any) amendments or alterations it would in their judgment be expedient to make in this Act, or otherwise relating to the administration of justice, and what other provisions (if any) which cannot be carried into effect without the authority of parliament it would be expedient to make for the better administration of justice. Any extraordinary council of the said judges may also at any time be convened by the Lord Chancellor.

As to the Rule Committee, see J. A. 1881, s. 19, p. 496.
As to power to make orders in Council as to vacations, on report of Council of Judges, see s. 27, *supra*. As to power to alter number of Divisions, provide for extinction of offices, &c., see s. 32, *supra*. As to power of Supreme Court at any meeting to alter and ann R. S. C., see J. A. 1875, s. 17.

Acts of Parliament relating to former courts to be read as applying to Courts under this Act.

76. All Acts of Parliament relating to the several courts and judges whose jurisdiction is hereby transferred to the High Court and the Court of Appeal respectively, or wherein any of such courts or judges are mentioned or referred to, shall be construed and take effect, so far as relates to anything done or to be done after the commencement of this Act, as if the High Court of Justice or the Court of Appeal, and the judges thereof, respectively, as the case may be, had been named therein instead of such courts or judges whose jurisdiction is so transferred respectively; and in all cases not hereby expressly provided for in which, under any such Act, the concurrence or the advice or consent of the judge or any judges, or of any number of the judges, of any one or more of the courts whose jurisdiction is hereby transferred to the High Court is made necessary to the exercise of any power or authority capable of being exercised after the commencement of this Act, such power or authority may be exercised by and with the concurrence, advice, or consent of the same or a like number of judges of the High Court; and all general and other commissions, issued under the Acts relating to the Central Criminal Court or otherwise, by virtue whereof any judges of any of the courts whose jurisdiction is so transferred may, at the commencement of this Act, be empowered to try, hear, or determine any causes or matters, criminal or civil, shall remain and be in full force and effect, unless and until they shall respectively be in due course of law revoked or altered.

Cross references.—As to extraordinary powers of judges of former courts, s. 12, *supra*. Transfer of jurisdiction, ss. 16, 18, 19, *supra*. Saving right and duties of judges, ss. 11, 12, *supra*. Assignment,

s. 34. Saving old practice, s. 23. Chief Justice of England to have powers of C. J., C. Pleas, and C. B. of Exchequer, J. A. 1881, s. 25.

"**All Acts relating, &c., . . . or wherein any of such Courts,**" **&c.**—Certain provisions of the C. L. P. Act, 1852, s. 19 (now repealed), as to appeals to H. of Lords, and as to service of notice of a writ on foreigners out of the jurisdiction, were held to be kept alive by force of this section. (*Justice* v. *Mersey Co.*, 1 C. P. D. 575; *Padley* v. *Camphausen*, 10 C. D. 550; *Clarborough* v. *Toothill*, 17 C. D. 787.)

Judgments Extension Act.—The Judgments Extension Act, 1868, made a judgment in England of a Common Law Court for debt, damages, or costs, enforceable in Scotland or Ireland. The combined effect of the Act and this section is to make a *judgment* of any Division of the High Court for debt, damages, or costs, enforceable in Scotland and Ireland. See *Re Howe Machine Co.*, 41 C. D. 118; 61 L. T. 170 (C. A.). See (n.) "Judgments Extension," O. 42, r. 28.

"*A Court of Equity.*"—Under this section the words "the High Court of Justice" should be read in substitution for the words "a court of equity" in s. 4, s.s. 3, of Debtors Act, 1869. (*Marris* v. *Ingram*, 13 C. D. 338.)

"*High Court of Chancery.*"—By 53 Geo. 3, c. 127, a significavit is to issue to the "High Court of Chancery;" these words are now to be read "High Court of Justice." (*Re Bell Cox*, 20 Q. B. D., p. 12.)

By 17 & 18 Vict. c. 104, s. 65, the "Court of Chancery" is authorised to prohibit dealings with ships. The P. D. and A. Div. can now make the order. (*Nicholas* v. *Dracachis*, 1 P. D. 72.)

"*Lord High Chancellor*" *and* "*Master of the Rolls.*"—*Semble*, these words in Solicitors Act, 1843, s. 37, are equivalent to "the Court of Chancery," and so by s. 34, s.s. 2, *supra*, mean now the C. D. (*Re Pollard*, 20 Q. B. D. 656.)

"*Court of Common Pleas.*"—By the Fines and Recoveries Act, s. 91, the Court of Common Pleas was empowered to dispense with the concurrence of a husband in the conveyance of his wife's estate. By the effect of s. 34, *supra*, and an order in council, 16 Dec. 1880 (see s. 32 (n.), *supra*), this jurisdiction is assigned to the Q. B. D. Stirling, J., declined, therefore, to exercise it. (*Re Giles*, 70 L. T. 757.)

"*Judge of any one of the Superior Courts of Common Law,*" *&c.*—Cf. s. 16, *supra*, and *Re Donisthorpe*, (1897) 1 Q. B. 671.

"*Justice of Assize.*"—See *The Hanley, &c., Coal Co.* v. *N. S. R. Co.*, 64 L. T. 656, cited (n.) "When acting as judges," p. 391, *supra*.

Probate Court Act.—Whether the provisions of the Probate Court Act are applicable to all the Divisions of the High Court, *quære*. (*De Leon* v. *Hubbard*, W. N. (83) 197; and see s. 16, (n.) "Jurisdiction," &c., p. 390, *supra*.)

"**And in all Cases,**" **&c.**—This clause seems expressly to substitute three judges of the High Court for the three Vice-Chancellors mentioned in 18 & 19 Vict. c. 134, s. 16. (*Ex p. Mayor of London*, 25 C. D., p. 392.)

Cash under control of Court.—O. 22, r. 17, is made by virtue of this section and under the powers contained in 23 & 24 Vict. c. 38, s. 10.

"**General and other Commissions.**"—See s. 93, p. 452.

Jud. Act, 1873, ss. 77—87.

PART V.

Officers and Offices.

77—81. [*These sections are omitted, as they do not affect practice matters, but deal with the transfer of officers, their salaries, status, &c.*]

Powers of commissioners to administer oaths.

82. Every person who at the commencement of this Act shall be authorized to administer oaths in any of the Courts whose jurisdiction is hereby transferred to the High Court shall be a commissioner to administer oaths in all causes and matters whatsoever which may from time to time be depending in the High Court or in the Court of Appeal.

See O. 38, rr. 4, 5, 6, *post*. As to commissioners to take oaths, see s. 77, *supra*, and *Reg.* v. *Truro*, 21 Q. B. D. 555 ; *Munton* v. *Truro*, 34 Sol. Jo. 32.

Official referees to be appointed.

83. There shall be attached to the Supreme Court permanent officers, to be called "official referees," for the trial of such questions as shall under the provisions of this Act be directed to be tried by such referees. The number and the qualifications of the persons to be so appointed from time to time, and the tenure of their offices, shall be determined by the Lord Chancellor, with the concurrence of the presidents of the divisions of the High Court, or a majority of them (of which majority the Lord Chief Justice of England shall be one), and with the sanction of the treasury. Such official referees shall perform the duties entrusted to them in such places, whether in London or in the country, as may from time to time be directed or authorized by any order of the High Court or of the Court of Appeal ; and all proper and reasonable travelling expenses incurred by them in the discharge of their duties shall be paid by the treasury out of the moneys to be provided by parliament.

Official Referees.—See generally as to Official Referees, O. 36, rr. 48—55, *post* ; Arbitration Act, 1889, s. 13, p. 548, *post*.

The number and qualification of the official referees rests with the Lord Chancellor, the Lord Chief Justice, and the President of the Probate, &c., Division. (See *supra*, and 31 Sol. Jo., p. 2.)

84—86. [*These sections, relating to the duties and appointment of officers, &c., and to patronage, are omitted.*]

Solicitors, &c.

87. All persons admitted as solicitors, attorneys, or proctors of or by law empowered to practise in any court the jurisdiction of which is hereby transferred to the High Court or the Court of Appeal, shall be called "solicitors of the Supreme Court," and shall be entitled to the same privileges and be subject to the same obligations, so far as circumstances will permit, as if this Act had not passed ; and all persons who from time to time, if this Act had not passed, would have been entitled to be admitted as solicitors, attorneys, or proctors of or been by law empowered to practise in any such courts, shall be entitled to be admitted and to be called solicitors of the Supreme Court, and shall be admitted by the Master of the Rolls, and shall, as far as circumstances will

permit, be entitled as such solicitors to the same privileges and be subject to the same obligations as if this Act had not passed.

Any solicitors, attorneys, or proctors to whom this section applies shall be deemed to be officers of the Supreme Court; and that court, and the High Court, and the Court of Appeal respectively, or any division or judge thereof, may exercise the same jurisdiction in respect of such solicitors or attorneys as any one of Her Majesty's superior courts of law or equity might previously to the passing of this Act have exercised in respect of any solicitor or attorney admitted to practise therein.

See J. A. 1875, s. 14, p. 467.

"**Solicitors**"—**Effect of Section.**—The effect of this section is to entitle any person capable of practising in any of the Courts consolidated by the Act into the Supreme Court, to be admitted to practise in any branch of the Supreme Court. (*Re Toller*, W. N. (1875), 254.) But it does not authorize any person other than a proctor of the Arches Court to practise in that Court, which is outside the Jud. Acts. (*Crisp* v. *Martin*, 1 P. D. 302.) But now, by the Legal Practitioners Act, 1876 (39 & 40 Vict. c. 66), and the Solicitors Act, 1877 (40 & 41 Vict. c. 25), s. 17, solicitors of the Supreme Court may appear as proctors in any ecclesiastical court. By s. 2 of the Legal Practitioners Act, 1877 (40 & 41 Vict. c. 62), surrogates and other unqualified practitioners are forbidden to take instructions for or prepare any papers on which to found or oppose a grant of probate or letters of administration. See further J. A. 1875, s. 14, amending this section; J. A. 1881, s. 24, vesting certain powers over solicitors in the M. R. with the concurrence of L. C. and L. C. J.; and cf. Additional Notes, Pt. IV., (n.) "Solicitors," p. 356, where the practice cases as to solicitors are collected.

"**May Exercise the same Jurisdiction.**"—The Chancery Division will exercise this jurisdiction according to the practice with which it is familiar, and will not grant a rule *nisi* against a solicitor. (*Re Copp*, 32 W. R. 25; and see (n.) "Jurisdiction of Court over," Additional Notes, Pt. IV., p. 356.)

PART VI.

Jurisdiction of Inferior Courts.

Power by Order in Council to confer jurisdiction on inferior Courts.

88. It shall be lawful for her Majesty from time to time by Order in Council to confer on any inferior court of civil jurisdiction the same jurisdiction in Equity and in Admiralty, respectively, as any County Court now has, or may hereafter have, and such jurisdiction, if and when conferred, shall be exercised in the manner by this Act directed.

See note to following section.

Powers of inferior Courts having Equity and Admiralty jurisdiction.

89. Every inferior Court which now has or which may after the passing of this Act have jurisdiction in equity, or at law and in equity, and in Admiralty respectively, shall, as regards all causes of action within its jurisdiction for the time being, have power to

Jud. Act, 1873, ss. 89, 90.

grant, and shall grant in any proceeding before such court, such relief, redress, or remedy, or combination of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counterclaim, equitable or legal (subject to the provision next hereinafter contained), in as full and ample a manner as might and ought to be done in the like case by the High Court.

"**Inferior Courts.**"—See Cty. Cts. Act, 1888, s. 187, cited s. 67, p. 445. Rules, J. A. 1884, s. 24 (n.), p. 505. Appeals from, s. 45, *supra*. Jurisdiction of, in counterclaim, J. A. 1884, s. 18, p. 504.

"**Any Proceeding.**"—These words here and in next section mean "any action," and not a motion, &c., in any action. (*Pryor* v. *City Offices Co.*, *infra*.)

"**Such Relief, Redress,**" **&c.**—Compare ss. 24, 25, *supra*; s. 91 (n.) *infra*, and (n.) "As might and ought," &c., *infra*.

County Court.—*Counterclaim.*—See s. 90 (n.); J. A. 1884, s. 18, p. 504, *infra*.

Stay of Proceedings.—A County Court cannot stay proceedings in High Court since J. A. 1873. (*Cobbold* v. *Pryke*, 4 Ex. D. 315.)

Injunction.—See *Martin* v. *Bannister*, 4 Q. B. D. 491; *Brune* v. *James*, (1898) 1 Q. B. 417.

Attachment. Committal.—Not only final, but interlocutory orders, can be enforced by committal. (*Richards* v. *Cullerne*, 7 Q. B. D. 623; *Martin* v. *Bannister*, *supra*.) As to appeal therefrom, see s. 45 (n.).

Receiver. Equitable Execution.—See *Drew* v. *Brown*, 86 L. T. Jo. 449.

Specific Performance.—Cty. Cts. Act, 1888, s. 67. Specific performance of an agreement by husband and wife to live separate, may be enforced in Cty. Ct. (*McGregor* v. *M.*, 57 L. J., Q. B. 268.) But not of an agreement to take a house of over £500 value, see *Foster* v. *Reeves*, (1892) 2 Q. B. 255, cited s. 91 (n.).

Interpleader.—See J. A. 1884, s. 17, p. 503.

Detinue.—An order in detinue for the delivery up of a chattel can be made in a County Court. (*Winfield* v. *Boothroyd*, 34 W. R. 501.)

Contempt.—Cty. Cts. Act, 1888, s. 162. See *Reg.* v. *Lefroy*, L. R. 8 Q. B. 134; *Reg.* v. *Judge of Brompton Cty. Ct.*, (1893) 2 Q. B. 195.

Lord Mayor's Court.—This section does not give the Judge of the Mayor's Court power to apply O. 40, r. 10, to proceedings in that Court. (*Pryor* v. *City Offices Co.*, 10 Q. B. D. 504.) See J. A. 1884, s. 18, *post*.

"**As might and ought to be done by the High Ct. of Justice.**"—See s. 24, s.s. 2, 5, 7, *supra*, and *Foster* v. *Reeves*, *supra*, cited s. 91 (n.).

Counterclaims in inferior courts and transfers therefrom.

90. Where in any proceeding before any such inferior Court any defence or counterclaim of the defendant involves matter beyond the jurisdiction of the Court, such defence or counterclaim shall not affect the competence or the duty of the Court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the Court has jurisdiction to administer shall be given to the defendant upon any such counterclaim: Provided always, that in such case it shall be lawful for the High Court or any division or judge thereof, if it shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such inferior Court to the High Court, or to any

division thereof; and in such case the record in such proceeding shall be transmitted by the registrar, or other proper officer, of the inferior Court to the High Court; and the same shall thenceforth be continued and prosecuted in the High Court as if it had been originally commenced therein. Jud. Act, 1873, ss. 90, 91.

Cross References.—See ss. 88, 89 (n.); J. A. 1884, s. 18.
"**Any Proceeding.**"—See this note, preceding section.
"**Defence or Counterclaim.**"—See An. Cty. Ct. Practice, 1899, *Davis* v. *Flagstaff, &c., Company*, 3 C. P. D. 228; *Ward* v. *Wyld*, 5 C. D. 779; *Webster* v. *Armstrong*, 54 L. J. Q. B. 236: J. A. 1884, s. 18, p. 504.
"**To be Transferred.**"—If the proceedings are transferred hereunder to the High Court, the practice of that court will of course be followed. (*Davies* v. *Williams*, 13 C. D., p. 552.) And see Cty. Cts. Act, 1888, s. 68; Cty. Ct. Rules, 1886; O. 33, r. 7.
In the Q. B. D. these orders are, in a clear case, made "ex parte," but if there is any doubt the Master directs a summons to issue.

91. The several rules of law enacted and declared by this Act shall be in force and receive effect in all courts whatsoever in England, so far as the matters to which such rules relate shall be respectively cognizable by such courts. New rules of law to apply to all courts.

"**Rules of Law.**"—See s. 25, *supra*; J. A. 1875, s. 10 and next note.
"**By this Act.**"—By J. A. 1875, s. 1, the two Acts are to be read together.
"**In all Courts.**"—In *King* v. *Hawkesworth*, 4 Q. B. D. 371, it was held that this section made O. 55, 1875 (now O. 65), applicable to all Courts in England, and therefore to the Liverpool Court of Passage. The terms of J. A. 1875, s. 17, which give power to regulate the costs of proceedings in the S. C., do not appear to have been called to the attention of the Court. This case has been much doubted, see *Poyser* v. *Minors*, 7 Q. B. D. 329.
County Courts.—See s. 80, *supra*, and (n.). By s. 89, *supra*, s. 24, *supra*, is in effect made applicable to inferior Courts, and it is submitted that the object of this section (91) was to make s. 25, *supra*, also apply, see *Pryor* v. *City Offices Co.*, 10 Q. B. D. 504; and cf. *Speers* v. *Daggers*, 1 Cab. & Ellis, 503; *Bellhouse* v. *The Owners, &c.*, (1893) 1 Q. B., p. 104; consider also J. A. 1875, s. 17.
In *Foster* v. *Reeves*, (1892) 2 Q. B. 255, however, the C. A. held that the equitable doctrine that a tenant holding under an agreement of which specific performance would be decreed must be treated as holding under a lease, see s. 25, s.s. 11, (n.) "Agreement for Lease," p. 420, and *Walsh* v. *Lonsdale*, &c., there cited, did not apply to an action in a *County Court, such Courts not having concurrent jurisdiction in law and equity*. Neither this section nor s. 89 were cited.

Jud. Act, 1873, ss. 92—96.

PART VII.

Miscellaneous Provisions.

92. [Transfer of books and papers, &c., in possession of any Court, the jurisdiction of which is transferred by the Act to Supreme Court.]

Saving as to circuits, &c.

93. This Act, except as herein is expressly directed, shall not, unless or until other commissions are issued in pursuance thereof, affect the circuits of the judges or the issue of any Commissions of Assize, Nisi Prius, Oyer and Terminer, Gaol Delivery, or other commissions for the discharge of civil or criminal business on circuit or otherwise, or any patronage vested in any judges going circuit, or the position, salaries, or duties of any officers transferred to the Supreme Court who are now officers of the Superior Courts of Common Law, and who perform duties in relation to either the civil or criminal business transacted on circuit.

Cross References.—Commissions of assize, &c., transferred to H. Ct., s. 16, *supra*. Saving of Commissions, s. 76. Issue of Commissions, s. 29, *supra*. In Counties Palatine, s. 99, *infra*. Regulation of Circuits, J. A. 1875, s. 23. Appointment of Circuit officers, J. A. 1884, s. 21.

"**Any Patronage,**" &c.—See J. A. 1884, s. 21.

Saving as to Lord Chancellor.

94. This Act, except so far as herein is expressly directed, shall not affect the office or position of the Lord Chancellor; and the officers of the Lord Chancellor shall continue attached to him in the same manner as if this Act had not passed; and all duties, which any officer of the Court of Chancery may now be required to perform in aid of any duty whatsoever of the Lord Chancellor, may in like manner be required to be performed by such officer when transferred to the Supreme Court, and by his successors.

"**Lord Chancellor.**"—See further as to, s. 100, *infra*; J. A. 1875, s. 3. As to the seal being in Commission, s. 98, *infra*.

Judgment after resignation.—By 15 & 16 Vict. c. 80, s. 90, the L. C. may deliver written judgment within six weeks from resignation.

Saving as to Chancellor of Lancaster.

95. This Act, except so far as is herein expressly directed, shall not affect the offices, position, or functions of the Chancellor of the county palatine of Lancaster.

Saving as to Chancellor of the Exchequer, and sheriffs.

96. The Chancellor of the Exchequer shall not be a Judge of the High Court of Justice, or of the Court of Appeal, and shall cease to exercise any judicial functions hitherto exercised by him as a Judge of the Court of Exchequer; but save as aforesaid he shall remain in the same position as to duties and salary, and other incidents of his office, as if this Act had not passed.

The latter part of this section, which saved the old order and course relating to appointment of sheriff by the Court of Exchequer, was repealed by S. L. Rev. Act. 1883; cf. the Sheriffs Act, 1887, s. 6.

Saving as to Lord Treasurer and office of the Receipt of Exchequer.

97. Nothing in this Act contained shall affect the office of Lord Treasurer, except that any Lord Treasurer shall not hereafter exercise any judicial functions hitherto exercised by him as a Judge of the Court of Exchequer; and nothing in this Act shall affect the office of the Receipt of the Exchequer.

Provisions as to great seal being in commission.

98. When the great seal is in commission, the Lords Commissioners shall represent the Lord Chancellor for the purposes of this Act, save that as to the Presidency of the Court of Appeal, and the appointment or approval of officers, or the sanction to any order for the removal of officers, or any other act to which the concurrence or presence of the Lord Chancellor is hereby made necessary, the powers given to the Lord Chancellor by this Act may be exercised by the Senior Lord Commissioner for the time being.

O. 72, r. 3. And cf. 1 Will. & Mar. c. 21.

Provision as to Commissions in Counties Palatine.

99. The Counties Palatine of Lancaster and Durham shall respectively cease to be Counties Palatine, so far as respects the issue of Commissions of Assize, or other like Commissions, but not further or otherwise; and all such Commissions may be issued for the trial of all causes and matters within such counties respectively in the same manner in all respects as in any other counties of England and Wales.

Cf. note to s. 93, *supra*.

Interpretation of terms.

100. In the construction of this Act, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned shall have, or include, the meanings following; (that is to say,)

Note.—By O. 71, r. 1, the provisions of this section are to apply to these (1883) Rules.

"**Repugnant thereto.**"—It frequently happens that a word, although within the definition given by the section, is used in some Order in such a way that the context shows that the definition here given was not intended to apply to the word as used in such order. See "Party," "Person," "Pleading," "Action," *infra*.

Sometimes also long-established and convenient practice will give a word in one rule a different meaning to that which it has in another. See *Jones* v. *Macaulay*, (1891) 1 Q. B. 221, where the word "plaintiff" was held to have a different meaning in r. 11 of O. 27, to that which it has in r. 2 of that order, see Vol. I., p. 329.

"**Lord Chancellor**" shall include Lord Keeper of the Great Seal.

"**The High Court of Chancery**" shall include the Lord Chancellor.

"**The Court of Appeal in Chancery**" shall include the Lord Chancellor as a judge on rehearing or appeal.

["**London Court of Bankruptcy**" shall include the chief judge in bankruptcy.]

Rep. S. L. Rev. Act, 1883 (46 & 47 Vict. c. 39).

Jud. Act, 1873, s. 100.

"**The Treasury.**" This definition is repealed by S. L. Rev. (No. 2) Act, 1893.]

"**Rules of Court**" shall include forms.

"**Cause**" shall include any action, suit, or other original proceeding between a plaintiff and a defendant, and any criminal proceeding by the Crown.

"**Suit**" shall include action.

The causes or suits in the Divorce Court are not called actions (see O. 68, r. 1). (*Re Binstead*, (1893) 1 Q. B., p. 208 (C. A.).)

"**Action**" shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by rules of court; and shall not include a criminal proceeding by the Crown.

In *Hamlyn* v. *Betteley*, 6 Q. B. D. 63, Selborne, C., thought that as there were not under the rules then applicable to interpleader (O. 1, r. 2, 1875) any rules prescribing the commencement of interpleader proceedings, such proceedings did not constitute an action hereunder. See now O. 57, r. 5, and O. 54, r. 4f. (4).

An originating summons under O. 54A.; O. 55, rr. 3 and 5A, is an action, *Re Fawsitt*, 30 C. D. 231, but the word "action," in O. 16, r. 48, does not include originating summons. (*Re Wilson*, 45 C. D. 266; and see *Re Thwaites*, O. 35, r. 14 (n.).) Nor is a summons taken out under Conveyancing and Law of Property Act, 1881, s. 14, s.s. 1 and 2, "an action" for the purposes of that section. (*Lock* v. *Pearce*, (1893) 2 Ch. 271.)

A counterclaim is not an "action" within Cty. Cts. Act, 1888, s. 66, and so cannot be remitted thereunder. (*Delobbel-Flipo* v. *Varty*, (1893) 1 Q. B. 663.)

A caveat entered in a Probate suit does not constitute the commencement of an action. (*Moran* v. *Place*, (1896) P. 214.)

"**Plaintiff**" shall include every person asking any relief (otherwise than by way of counterclaim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise.

"**By way of Counterclaim.**"—See *Verney* v. *Thomas*, 36 W. R. 398; *Lewin* v. *Trimming*, 21 Q. B. D. 230.

Notwithstanding these words, "plaintiff" in O. 27, r. 11, is held to include plaintiff by counterclaim, but not in O. 27, r. 2. (See *Jones* v. *Macaulay*, (1891) 1 Q. B. 221.)

"**Person.**"—See (n.), *infra*.

"**Petitioner**" shall include every person making any application to the court, either by petition, motion, or summons, otherwise than as against any defendant.

"**Person.**"—See (n.), *infra*.

"**Defendant**" shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend any proceedings.

"**Defendant.**"—A third party is not a defendant for all purposes. (*Eden* v. *Weardale, &c., Co.*, 28 C. D. 333.) Cf. also *Edison, &c., Co.* v. *Holland*, 41 C. D. 28. Consider the last six lines of J. A. 1873, s. 24, s.s. 3.

It will depend on the directions given under O. 16. r. 53, whether the third party is or is not a defendant within this section. (*Eden* v. *Weardale, &c., Co.*, 35 C. D. 287; *Edison, &c., Co.* v. *Holland*, *supra*; and *Byrne* v. *Brown*, 22 Q. B. D. 657.)

As to defendant to counterclaim, cf. *Lewin* v. *Trimming*, 21 Q. B. D., p. 234, and O. 27, r. 11, (n.) "Counterclaim."

"**Person.**"—Includes body corporate or politic, O. 71, r. 1.

"**Served with notice.**"—*Semble*, these words, "served with notice," &c., are intended to apply to persons attending or served under O. 16, r. 40. See remarks of Cotton, L.J., *Eden* v. *Weardale, &c., Co.*, 35 C. D., p. 293; and see *supra*, s. 24, s.s. 3.

"**Party**" shall include every person served with notice of, or attending any proceeding, although not named on the record.

Party.—This word, as used in O. 31, r. 26, may mean plaintiffs collectively or defendants collectively. (*Joyce* v. *Beall.* (1891) 1 Q. B. 459.)

Next Friend.—A next friend was held not to be a "party" within O. 31, r. 12. (*Re Corsellis*, 31 W. R. 414; *Dyke* v. *Stephens*, 30 C. D. 189; *Scott* v. *Consol. Bank*, W. N. (93) 56.) See now, O. 31 r. 29 (1893).

Guardian ad litem.—This definition would include a guardian *ad litem*, but the provisions of O. 18 (1875), and of O. 31, r. 1, were held to be repugnant thereto. (*Ingram* v. *Little*, 11 Q. B. D., p. 253.) See now O. 31, r. 29 (1893).

Opposite Parties.—Cf. *Eden* v. *Weardale, &c., Co.*, 35 C. D. 287.

Person Served but not Appearing.—A person served with a writ but not entering an appearance, is nevertheless a "party." *Per* Lindley, L.J., *Re Evans*, (1893) 1 Ch., p. 264.

Notice of Judgment.—By O. 16, r. 40, persons served with notice are to be bound by the judgment as if they were parties. Kekewich, J., in *Re Continental, &c., Co.*, (1897) 1 Ch., p. 514, appears to have thought that such service did not make the persons served parties.

Counterclaim.—As to defendant by counterclaim, see *Lewin* v. *Trimming*, 21 Q. B. D. 230; as to plaintiff by counterclaim, *Verney* v. *Thomas*, 36 W. R. 393.

"**Person.**" includes a body corporate or politic. O. 71, r. 1.

"**Served with Notice.**"—See this (n.), *supra*.

"**Or Attending.**"—O. 16, rr. 40, 42.

"**Matter**" shall include every proceeding in the court not in a cause.

The voluntary liquidation of a company is a "matter" within the meaning of that word in O. 37, r. 5. (*Re Mysore, &c., Mining Co.*, 42 C. D. 535. See also *Re Jones*, W. N. (89) 196.)

A voluntary submission to arbitration is not a "matter" within this definition, see O. 37, r. 5, Vol. I., p. 496, (n.) "Cause or matter": Arb. Act, 1889, s. 1, p. 529. (*Shaw and Ronaldson Arb.*, (1892) 1 Q. B. 91.)

"**Pleading**" shall include any petition or summons, and also shall include the statements in writing of the claim, or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counterclaim of a defendant.

"**Petition.**"—See *Re Boulton's Trust*, 30 W. R. 596; O. 19, r. 4.

"**Or Summons.**"—Summons does not mean "writ of summons." (*Murray* v. *Stephenson*, 19 Q. B. D. 60.)

Defence.—A document in the nature of a letter was held not to be a "defence." (*Marshall* v. *Jones*, 52 J. P. 423.)

Jud. Act, 1873, s. 100.

Specially Indorsed Writ.—The word "pleadings" in rule 11 of O. 64 does not include a specially indorsed writ, because other parts of that order, *e.g.*, rule 4, are repugnant thereto. But a specially indorsed writ is, where the subject or context of the order are not repugnant thereto, a pleading within this definition, and cf. *Anlaby* v. *Praetorius*, cited O. 21, r. 6, and (n.) "Writ a Pleading," O. 2, r. 1.
Particulars.—See (n.) "Any pleading," O. 25, r. 4, Vol. I., p. 317.
Originating Summons.—See O. 71. r. 1 (a), Vol. I., p. 986.

"**Judgment**" shall include decree.

Semble, this is not a general definition, but one for the purposes of the Judicature Acts only. *Per* Chitty, J., *Burrows* v. *Holley*, 35 C. D. 124; *per* M. R., *Re Binstead*, (1893) 1 Q. B., p. 203; and "Judgment in an action" does not include or describe a decree in a suit for divorce. *Per* Kay, L.J., *Re Binstead*, p. 209.
Judgments and orders are kept distinct by the J. A., although they may be enforced in the same manner, *Ex p. Chinery*, 12 Q. B. D., p. 345. (O. 42, r. 24, n.) In *Re Binstead*, *supra*, it was held that an order on a co-respondent to pay costs made on a decree absolute was not a "final judgment" within B. A. 1883, s. 4, s.s. 1 (g). So an "order" in bankruptcy setting aside a deed is not a "final judgment" in an action under B. A. 1883, s. 4, s.s. 1 (g). (*Re A Bankruptcy Notice*, (1895) 1 Q. B. 609.) In *Joynt* v. *MacCabe*, (1899) 1 I. R. 104, it was held that a consent order staying proceedings was not a "judgment"; but see *Shaw* v. *Hertford County Council*, (1899) 2 Q. B. 9, p. 282.
For the purposes of an appeal a judgment means a decision obtained in an action, and every other decision is an order, *Onslow* v. *Commissioners, &c.*, 25 Q. B. D., p. 466, adopting judgment in *Ex p. Chinery*. See further, s. 19, *supra*, (n.) "Any Judgment or Order," p. 394.
The words, "order, decree, judgment," are used together in J. A. 1875, s. 12.

"**Order**" shall include rule.

See cases cited in last note, and *Walsall Overseers* v. *L. & N. W. Ry. Co.*, 4 App. Cas. 30.

"**Oath**" shall include solemn affirmation and statutory declaration.

Compare Interpretation Act, 1889, s. 3.

"**Crown cases reserved**" shall mean such questions of law reserved in criminal trials as are mentioned in the Act of the eleventh and twelfth years of Her Majesty's reign, chapter seventy-eight.

"**Pension**" shall include retirement and superannuation allowance.

"**Existing**" shall mean existing at the time appointed for the commencement of this Act.

Commencement, see s. 2, *supra*, (n.), p. 385.

[SCHEDULE OF RULES OF PROCEDURE.]

This Schedule was repealed by J. A. 1875, s. 33; and see Append. O. Part I., *supra*.

THE

SUPREME COURT OF JUDICATURE ACT, 1875.

(38 & 39 VICT. c. 77.)

An Act to amend and extend the Supreme Court of Judicature Act, 1873. [11th August, 1875.]

Jud. Act, 1875, ss. 1—4.

1. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Supreme Court of Judicature Act, 1873, (in this Act referred to as "the principal Act,") and may be cited as the Supreme Court of Judicature Act, 1875.

Short title, and construction with 36 & 37 Vict. c. 66.

See J. A. 1873, s. 1 (n.), p. 385.

2. This Act, except any provision thereof which is declared to take effect before the commencement of this Act, shall commence and come into operation on the first day of November, 1875.

Commencement of Act.

The remainder of this section, suspending ss. 20, 21, 55 of J. A. 1873, until Nov., 1876, was repealed by the Appellate Jurisdiction Act, 1876, s. 24.

3. The Lord Chancellor shall not be deemed a permanent judge of that Court, and the provisions of the said section relating to the appointment and style of the judges of the High Court shall not apply to the Lord Chancellor.

4. Her Majesty's Court of Appeal, in this Act and in the principal Act referred to as the Court of Appeal, shall be constituted as follows: There shall be five ex-officio judges thereof, and also so many ordinary judges, not exceeding three at any one time, as Her Majesty shall from time to time appoint.

Constitution of Court of Appeal.

The ex-officio judges shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls.

The Lord Chancellor may by writing addressed to the president of any one or more of the following divisions of the High Court, that is to say, the Queen's Bench Division, and the Probate, Divorce, and Admiralty Division, request the attendance at any time, except during the time of the spring or summer circuits, of an additional judge from such division or divisions (not being ex-officio judge or judges of the Court of Appeal) at the sittings of the Court of Appeal, and a judge, to be selected by the division from which his attendance is requested, shall attend accordingly.

Every additional judge, during the time that he attends the

Jud. Act, 1875, ss. 4—6.

sittings of Her Majesty's Court of Appeal, shall have all the jurisdiction and powers of a judge of the said Court of Appeal, but he shall not otherwise be deemed to be a judge of the said court, or to have ceased to be a judge of the division of the High Court to which he belongs.

No judge of the said Court of Appeal shall sit as a judge on the hearing of an appeal from any judgment or order made by himself, or made by any divisional court of the High Court of which he was and is a member.

Whenever the office of an ordinary judge of the Court of Appeal becomes vacant a new judge may be appointed thereto by Her Majesty by letters patent.

An appeal can be heard by the Court of Appeal although one of the judges then in the court is a judge of the division in which the action is pending, if he has taken no part in making the order appealed from. (*Fisher* v. *Val de Travers Asphalte Co.*, 1 C. P. D. 259.) And see J. A. 1881, s. 11, *post*.

The Courts of Common Pleas and Exchequer were abrogated by order in council of the 16th of December, 1880.

Court of Appeal.—See this (n.), J. A. 1873, s. 3, p. 386. Jurisdiction of Court of Appeal, J. A. 1873, ss. 18, 19. Additional ordinary judges of C. A., see App. Jur. Act, 1876, s. 15, and J. A. 1881, s. 3. Judge of Court of Appeal may sit as judge of High Court, J. A. 1873, s. 51; in vacation, *idem*, s. 52. Style of judges, J. A. 1877, s. 4 (n.). Ex-officio judges of C. A., see *supra*, and as to Ex-Chancellors, J. A. 1891, s. 1; as to Presidents of P. D. and Ad. Div., J. A. 1881, s. 4. Precedence of, s. 6, *infra*; J. A. 1884, s. 3; J. A. 1891, s. 2. Qualification of judges to sit on appeals, J. A. 1881, s. 11. As to M. R., see J. A. 1881, s. 2. As to L. C., see s. 3, *supra*; s. 6, *infra*. Sittings of Court of Appeal, s. 12, *infra*. Number of judges on appeals, s. 12, *infra*, and J. A. 1899, *post*. The constitution of the Court of Appeal is amended by App. Jur. Act, 1876, s. 15; J. A. 1881, ss. 2, 3, 4; J. A. 1891, s. 1. Ordinary judges of C. A. under obligation to go circuits and otherwise act as judge of H. C., App. Jur. Act. 1876, s. 15. Judges of C. A. to sit in High Court at request of L. C., J. A. 1873, s. 51. Attendance of judges of High Court in C. A., App. Jur. Act, 1876, s. 19.

5. [Tenure of office of judges and oaths of office. Judges not to sit in House of Commons.]

Precedence of judges.

6. The Lord Chancellor shall be president of the Court of Appeal; the other ex-officio judges of the Court of Appeal shall rank in the order of their present respective official precedence. The ordinary judges of the Court of Appeal, if not entitled to precedence as peers or privy councillors, shall rank according to the priority of their respective appointments as such judges.

The judges of the High Court who are not also judges of the Court of Appeal shall rank next after the judges of the Court of Appeal, and, among themselves (subject to the provisions in the principal Act contained as to existing judges), according to the priority of their respective appointments.

"**Ex-officio Judges.**"—See (n.) "Court of Appeal," s. 3, p. 386. Ex-Chancellors, when sitting as judges of C. A., are to rank according to their precedence as peers, J. A. 1891, s. 1, *post*.

Jud. Act, 1875, ss. 7—10.

7. [The whole of this section as to the jurisdiction of the L.JJ. in respect of lunatics is repealed by the Lunacy Act, 1890, and in effect replaced by s. 108 of that Act. See O. 16, r. 17 (n.); J. A. 1873, s. 17, s.s. 3; s. 18, s.s. 5; as to request of L. C. to L.JJ., see J. A. 1873, s. 51.]

8. [This section amended s. 11 of J. A. 1873, in respect of the judge of the High Court of Admiralty, and the registrar in Ecclesiastical and Admiralty causes. It provides, *inter alia*, that every judge of P. D. & A. Div. appointed after the passing of the Act (J. A. 1875) should, so far as the state of business would admit, share, with the judges mentioned in s. 37 of J. A. 1873, the duty of holding sittings for trials by jury in London and Middlesex, and sittings under Commissions of Assize, &c. It is repealed in part by S. L. Rev. Acts, 1883 and 1898.]

9. [London Court of Bankruptcy not to be transferred to High Court of Justice.]

Rep. Bankruptcy Act, 1883, ss. 93 and 104.

Amendment of 36 & 37 Vict. c. 66, s. 25, as to rules of law upon certain points.

10. In the administration by the court of the assets of any person who may die after the commencement of this Act, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, and in the winding up of any company under the Companies Acts, 1862 and 1867, whose assets may prove to be insufficient for the payment of its debts and liabilities, and the costs of winding up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the Law of Bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person or out of the assets of any such company, may come in under the decree or order for the administration of such estate, or under the winding up of such company, and make such claims against the same as they may respectively be entitled to by virtue of this Act.

This section is substituted for J. A. 1873, s. 25, s.s. 1, p. 411. By s. 1 this Act and the J. A. 1873, are to be read together.

"The Commencement."—This section came into force on 1 Nov., 1875. See s. 2, *supra*. (*Sherwin* v. *Selkirk*, 12 C. D., p. 73; and cf. J. A. 1873, s. 2 (n.).) The expression "Commencement" in all Acts means now the time at which the Act comes into operation, Interpretation Act, 1889, s. 36.

This section (10) is not retrospective. (*Re Joseph Suche & Co.*, 1 C. D. 48; *Sherwin* v. *Selkirk*, 12 C. D. 68.)

Object of Section.—Before the Judicature Act it was established that in the administration of the assets of a deceased person, a secured creditor, who had not realized his security, could prove against the assets of his deceased debtor for the whole debt, and receive a dividend; he could then realize his security, and if he received in the whole more than 20*s.* in the £, he paid over the

Jud. Act, 1875, s. 10.

excess (*Mason* v. *Bogg*, 2 My. & Cr. 443; *Re Hopkins*, 18 C. D., p. 377 (C.A.)), and the same rule prevailed in the winding-up of a company (*Kellock's Case*, L. R. 3 Ch. 769). Now one of the objects of this section (see *Mersey Steel, &c. Co.*, v. *Naylor*, 9 Q. B. D., at p. 662) is to make the rule in bankruptcy applicable to the administration of the assets of deceased persons and to winding-up; the question is, not as to the administration of a fund, but as to the fund to be administered. (*Lee* v. *Nuttall*, 12 C. D. 65; *Re Witherusea Brick Works*, 16 C. D. 337; *Re D'Epineuil*, 20 C. D. 217; *Re Albion Steel, &c., Co.*, 7 C. D. 547; *Re Gould*, 19 Q. B. D. 92; *Re Hargreaves*, 44 C. D. 236.)

It does not enlarge the assets to be administered. (*Re D'Epineuil*, 20 C. D. 217; *Re Crumlin, &c., Co.*, 11 C. D. 755; *Gorringe* v. *Irwell, &c., Co.*, 34 C. D. 128.) The assets are to be ascertained by applying the general laws of property and not the special rules applicable only to cases of bankruptcy. (*Re Leng*, (1895) 1 Ch. 652.)

It does not apply *all* the principles of bankruptcy to insolvent estates. *Re D'Epineuil, supra*, and (n.) "Under the Law of Bankruptcy," *infra*, p. 464.

At what Time the Section applies.—Selborne, C., in *Re Milan, &c., Co.*, 25 C. D., p. 591, said, "The clause refers only to a company unable to pay its debts, but I am of opinion that it must be treated as applicable to any company in liquidation *until it is shown that the assets are sufficient for payment of the debts in full.*" See (n.) "May prove to be," &c., p. 462.

Time for Valuing Security.—The "claim" made under an administration judgment corresponds to the proof in bankruptcy, and that is the time for the creditor to make up his mind how he will deal with the security. If he does not want to sell, he values his security and sends in his claim; if he wants to sell, he takes out a summons. (*Re Hopkins*, 18 C. D. 370.)

"In the Administration" (Insolvent Estates).—*Form of Judgment.*—See *Re Hildick*, 29 W. R. 733; *Re Murray*, 30 W. R. 283. In *Green* v. *Smith*, 22 C. D. 586, it was held by Fry, J., that the mutual credit clause of the Bankruptcy Act, 1869, will not be applied in the administration of the estate of a deceased person until it is shown that it is insolvent, and an inquiry may be ordered for that purpose.

Insolvency.—Costs of Administration.—The estate is *insolvent* within this section if it is insufficient for payment of the costs of administration. (*Re Leng*, (1895) 1 Ch. 652.)

Priority of Debts.—See (n.) "Under the Law of Bankruptcy," p. 464. Simple contract debts cannot be paid in preference to specialty debts in the case of an insolvent estate. *Re Hankey*, (1899) 1 Ch. 541.

Retainer by Executor.—Right of, is not affected by this section. (*Lee* v. *Nuttall*, 12 C. D. 61; and see *Re May*, 45 C. D. 499; *Re Hankey, supra; Re Rhoades*, (1899) 1 Q. B. 905; 2 Q. B. 347; *Davies* v. *Parry*, (1899) 1 Ch. 602.)

M. Women's P. Act, s. 3.—By virtue of this Act and the above section (10) a wife's claim in respect of a trade loan against her husband's estate is postponed to the claims of his other creditors. (*Re Leng*, (1895) 1 Ch. 652.)

Interest on Debt.—See O. 55, r. 63 (n.).

Judgment Creditor.—See this (n.), *infra*, p. 462.

Annuity. Insolvent Estate.—Claim to have annuity valued as in bankruptcy. As the annuity was not in arrear no debt was due to them, and summons dismissed. (*Re Hargreaves*, 44 C. D. 236; cf. *Re Beeman*, (1896) 1 Ch. 48.)

Estate Insolvent. Secured Creditor: Valuation of Security: Time

to Elect.—Where a secured creditor was called upon by the chief clerk to value his security and did so at 1,800*l.* (his debt being 1,828*l.*), the chief clerk certified he was an unsecured creditor for 28*l.* The property was sold on the creditor's application and realized only 1,457*l.* Held, that the creditor had elected to value, that the overvaluing was his own mistake, and that he could only prove for the 28*l.* (*Re Hopkins*, 18 C. D. 370 (C. A.).) See *Cooper* v. *Teahan*, 23 C. D. (Ir.) 203 (C. A.), decided on peculiar facts, and see *Re Carmarthenshire, &c., Co.*, 45 L. J. Ch. 200; *Re Kit Hill Tunnel*, 16 C. D. 590; *Re Hardy*, (1896) 1 Ch. 904.

Estate Insolvent. Mortgagee. Valuation of Security.—A creditor held promissory notes of the testator for 400*l.* This debt was secured by deposit of title-deeds of real estate. The creditor made an affidavit that 400*l.* was due to him, and he valued the security at 500*l.* The chief clerk excluded the creditor from the certificate and schedule, and found that no other persons than those scheduled had proved any debts. The security was sold for 500*l.*, and the money paid into Court; the creditor claimed principal, interest and mortgagee's costs thereout, which amounted to more than 500*l.* The executor insisted on rules 99 and 100 of the Bankruptcy Acts, 1869, 1883. Fry, J., held that the creditor was entirely outside the administration, and was entitled to the full benefit of his security. (*Re Hopkins*, 31 W. R. 495.)

Omission to Value.—See Bankruptcy Act, 1883, Schedule 1, r. 10, and *Re Piers*, (1898) 1 Q. B. 627.

Estate Insolvent: Bill of Sale not registered.—This section does not enlarge the assets to be administered, therefore the holder of an unregistered bill of sale may satisfy his debt in full out of the proceeds thereof. (*Re D'Epineuil*, 20 C. D. 217; *Re Knott*, 7 C. D. 549.)

Estate Solvent.—If the estate proves solvent the section does not apply, *Re Henley*, 75 L. T. 307; and cases cited O. 55, r. 62.

Administration in Bankruptcy of Estate of Person Dying Insolvent.—See B. A. 1883, s. 125; B. A. 1890, s. 21. Unless there is some provision to the contrary, the Court (see *Re Evans*, (1891) 1 Q. B. 143) acting hereunder must follow practice of C. D. in administration. (*Re Crowther*, 20 Q. B. D. 38.) The effect of this section is discussed by North, J., *Re Williams*, 36 C. D., pp. 583—585. As to presentation of a petition under this section where the debtor was resident abroad at the time of his death, see *Re Evans*, *supra*. A petition hereunder may be served before grant of probate or administration if, at the time of order made, there is a duly constituted personal representative before the Court. (*Re Sleet*, (1894) 2 Q. B. 797.) As to the meaning of the term "order for administration" in ss. 42, 125 of the B. A. 1883, see *Re Fryman*, 38 C. D. 468. The provisions of s. 27 of the B. A. 1883, do not apply to an administration of the estate of a person dying insolvent under s. 125. (*Re Hewitt*, 15 Q. B. D. 159.) The power given by s. 125, s.s. 4, of ordering the transfer to the Bankruptcy Court of proceedings for administration of the estate of a deceased insolvent debtor is discretionary, and where the assets are of small value, and expense has been incurred in Chambers, will not be exercised. (*Re Weaver*, 29 C. D. 236; *Re Baker*, 44 C. D. 262.) This discretion will not be fettered by the C. A., and will not be interfered with except for very strong reasons. (*Re Briggs*, 7 Times Rep. 572.) *Semble*, the applicant must have proved his debt. (*Re Weaver*.) As to the extent to which the provisions of Part III. of Bankruptcy Act, 1883, are applicable to an administration order, see *Watkins* v. *Barnard*, (1897) 2 Q. B. 521. Whether such an order is equivalent to an order for purposes of Bankruptcy Act, 1890, s. 11, see *Ibid.* An order for transfer may be made

Jud. Act, 1875, s. 10.

even after judgment and subsequent proceedings in the administration action, *Senhouse* v. *Mawson*, 52 L. T. 745; *Re Weaver*, 29 C. D. 236; *Re York*, 36 C. D. 233; *Re Baker*, 44 C. D. 262; but as to this see the doubt expressed by Fry, L.J., *Re Briggs*, 7 Times R. 572. Sub-section 3 of s. 125 is repealed by B. A. 1890, and this makes the case of *Ex p. May*, 13 Q. B. D. 552, obsolete, see Vaughan-Williams on Bankruptcy, 6 edit., p. 314. An order hereunder is not equivalent to a receiving order for the purposes of s. 45 of B. A. 1883, and it does not vest the estate in the trustee free from the right of an execution creditor. (*Hasluck* v. *Clark*, (1899) 1 Q. B. 699.) Nor does it affect the right of retainer. (*Re Rhoades*, (1899) 1 Q. B. p. 907; 2 Q. B. 347.) The fact that the mode of administration of assets in the C. D. differs from that in Bankruptcy, is not a ground for transfer. (*Re Baker*, 44 C. D. 262.) If the object of the transfer is to defeat the executors' right to retain, it will be refused. (*Re Briggs*, 7 Times Rep. 572; *Re Baker*, *supra*; *Re York*, 36 C. D. 233.)

Remitter to County Court.—The administration of an estate of deceased insolvent debtor may be remitted to the County Court, even after judgment and subsequent proceedings in S. C. (*Re York*, 36 C. D. 233.) See Cty. Cts. Act, 1888, s. 69.)

"**May prove to be insufficient.**"—These words cannot mean "shall be proved to be insufficient," but only that there is good reason to believe that the estate will turn out insolvent. *Per* Jessel, M.R., *Re Hopkins*, 18 C. D. 377. This section applies to an estate which though solvent at death is insolvent if costs of administration are taken into account. (*Re Leng*, (1895) 1 Ch. 652.) See (n.) "At what time the section applies," *supra*, p. 460.

"**And in the winding up of any company," &c.**—See the Companies (Winding-up) Act, 1890, 1st schedule. The liabilities of a company in liquidation in respect of future rent are not governed by s. 31 of the Bankruptcy Act, 1869. (*Re Westbourne Grove Drapery Co.*, 5 C. D. 248; and see *Re Oriental Bank*, 28 C. D., at p. 647; *Willmott* v. *London Celluloid Co.*, 31 C. D. 425.) See now Bankruptcy Act, 1883, s. 37.

Set-off.—The above section does not affect the right of a shareholder, who is also a creditor, to receive a dividend upon his debt if he has paid all calls. (*Re West of England Bank*, 12 C. D. 823). The rule as to set-off of debts against calls is not affected by this section, *Gill's Case*, 12 C. D. 755; *Re Washington Diamond, &c., Co.*, (1893) 3 Ch. 95; see (n.) "Mutual Credit," &c., p. 464, and O. 19, r. 3, "Set-off," Vol. I., p. 234.

Solvent Company.—If the company is solvent, the section does not apply; see the section, and *Re Taylor*, 8 C. D., p. 189; *Re Milan Tramways Co.*, 25 C. D. 587.

"**Of Secured, &c., Creditors.**"—A secured creditor means a person holding a mortgage, charge or lien on the property of the debtor, or any part thereof, as a security for a debt due to him from the debtor. See Bankruptcy Act, 1883, ss. 9, 168, which are imported into winding up. (*Re London, &c., Hotels Co., Quartermaine's Case*, (1892) 1 Ch., p. 642.) And see *Deering* v. *Bank of Ireland*, 12 App. Cas. 20; *Re West Cumberland Iron Co.*, (1893) 1 Ch. 713; *Re Lough Neagh, &c., Co.*, (1896) 1 I. R. 29.

Executor. Retainer.—An executor is not a secured creditor in respect of his right of retainer. (*Lee* v. *Nuttall*, 12 C. D. 61.)

Judgment Creditor.—A creditor who has obtained judgment against the personal representative of the deceased, although his judgment is not registered, is entitled to priority in the administration of assets, the 32 & 33 Vict. c. 46, not having any application, and this section not applying to judgment debts. (*Smith* v. *Morgan*, 5 C. P. D. 337; *Re Maggi*, 20 C. D. 545; Shelford R. P. S., (1893) p. 382; cf. *Re Gurney*, (1896) 2 Ch. 863, and *Re Leng*, (1895) 1

Jud. Act, 1875, s. 10.

Ch., p. 656 (C. A.).) Where the judgment has been obtained against *the deceased*, see *Van Gheluive* v. *Nerincker*, 21 C. D. 189.

Money paid into Court.—Where money is paid into Court to meet a claim made by a plaintiff, the plaintiff is a secured creditor. (*Re Moojen*, 12 C. D. 26; *Re Gordon*, (1897) 2 Q. B. 516.

Delivery of Writ of fi. fa. to Sheriff.—An execution creditor who had only lodged his writ with the sheriff before the filing of a petition, acquired no right of property in the goods, nor did he until *sale* (*Giles* v. *Grover*, 1 Cl. & Fin. 72), but after *seizure* he was a secured creditor. (*Ex p. Williams*, L. R. 7 Ch. 314; *Slater* v. *Pinder*, L. R. 7 Ex. 95; *Re Taylor*, 8 C. D. 183; cf. *Re Clarke*, (1898) 1 Ch. 336.)

But seizure and sale before date of receiving order and before notice of petition is now necessary, B. A. 1883, ss. 45, 46. In *Watkins* v. *Barnard*, (1897) 2 Q. B. 521, the sheriff within the 14 days limited by B. Act, 1890, s. 11, received notice of a petition in bankruptcy, and after the 14 days, of an administration petition under B. Act, 1883, s. 125, on which an order was afterwards made. Held, judgment creditor was entitled to the money. Cf. *Haslack* v. *Clark*, (1898) 2 Q. B. 28.

Elegit.—From time of *seizure* under *elegit* the creditor is a secured creditor, *Re Gourlay*, 15 C. D. 447; and delivery of land is seizure, *Re Hobson*, 33 C. D. 493; *Hough* v. *Windus*, 12 Q. B. D., p. 233; *Ex p. Sulger*, 17 C. D. 839; B. A. 1883, ss. 45, 146.

Landlord: Distress.—A landlord who has not put in a distress before winding up, is not a secured creditor. *Re Oak Pits, &c., Co.*, 21 C. D. 322; and see *New City Club*, 55 L. J. Ch. 704.

Garnishee Order Nisi (O. 45, r. 2).—Until service there is no charge. (*Hamer* v. *Giles*, 11 C. D. 942; *Re Stanhope, &c., Co.*, 11 C. D. 160.) But there is a complete security from the moment of service. (*Ex p. Joselyne*, 8 C. D. 327, C. A.; and *Emanuel* v. *Bridger*, L. R. 9 Q. B. 286. See B. A. 1883, s. 45; *Re Curtoys*, 17 C. D. 653.) But the order must be served *before* petition filed or presented. (*Re Stanhope, &c., Collieries Co.*, 11 C. D. 160.)

Receiver.—A person who has obtained an order for a Receiver by way of equitable execution is not, until possession is taken of the property, a "secured creditor" within this section. (*Re Lough Neagh Ship. Co.*, (1896) 1 I. R. 29: *Re Shephard*, 43 C. D. 131; *Re Potts*, (1893) 1 Q. B. 648; *Croshaw* v. *Lyndhurst Ship. Co.*, (1897) 2 Ch. 154: cf. *Re Clarke*, (1898) 1 Ch. 336.)

Sequestration (O. 43, r. 6).—A writ of sequestration is not a charge upon a particular fund any more than a writ delivered to the sheriff is (see *supra*). In order to make a charge upon a particular property, there must be something to fix it upon that particular property; but if it is followed by an injunction (*Willcock* v. *Terrell*, 3 Ex. D. 323), or by an attornment, then *secus* (*Ex p. Nelson*, 14 C. D. 41; see *Pratt* v. *Inman*, 43 C. D. 175).

Arrestment in Scotch Action.—Where, prior to the commencement of the winding up of an English company, a creditor has arrested property of the company in Scotland, and followed this up by bringing an action in Scotland, and making an arrest on the dependence of the action, he has become, subject to his getting a decree in such action, a secured creditor. (*Re West Cumberland, &c., Co.*, (1893) 1 Ch. 713.)

Foreign Attachment.—A creditor who has served upon his debtor a writ of foreign attachment is not a secured creditor. (*Levy* v. *Lovell*, 14 C. D. 234.)

Interest. Secured Creditor.—See O. 55, r. 63 (n.), Vol. I., p. 783.

"**Debts and Liabilities Provable.**"—The same law is to prevail in

Jud. Act, 1875, s. 10.

winding-up as in bankruptcy, see (nn.) "Proof of Debts," "Priority of Debts," *infra*.

Wife's Claim against Husband's Estate.—Section 3 of the M. W. P. Act, 1882, is a statutory rule postponing the wife's claim in bankruptcy to other creditors, and it is made applicable in administration by this section. (*Re Leng*, (1895) 1 Ch. 652 (C. A.).)

"Same Rules . . . as may be in force."—Observe not "*as were in force*," see *Mersey Steel, &c., Co.* v. *Naylor*, 9 App. Cas., p. 437; *Re Oriental Bank, &c.*, 28 C. D., p. 647.

"Under the Law of Bankruptcy."

Secured Creditors.—B. A. 1883, ss. 9 and 168 are imported into winding up. (*Re London, &c., Hotels Co.*, (1892) 1 Ch., p. 642.)

Proof of Debts.—B. A. 1883, s. 37, applies in winding up. (*Re Northern Counties, &c., Co.*, 17 C. D., p. 340.) Costs of proof, *Re British Goldfields, &c.*, (1899) 2 Ch. 7.

Mutual Credit and Set-off.—B. A. 1883, s. 38, and see (n.) "Set-off," O. 19, r. 3. The bankruptcy rules of set-off are imported into winding up. (*Mersey Steel, &c., Co.* v. *Naylor*, 9 App. Cas. 434.) But not so as to allow a set-off against calls. (*Re Whitehouse*, 9 C. D. 595; *Re Milan Tramways Co.*, 25 C. D. 587, C. A.; *Re Washington Diamond Co.*, (1893) 3 Ch. 95, 111; *Re Auriferous Properties*, (1898) 1 Ch. 691; *Ibid.* (No. 2), 2 Ch. 428; *Re Heywood*, (1897) 2 Ch. 593.) As to administration, see *Green* v. *Smith*, 22 C. D. 586.

Priority of Debts.—B. A. 1883, s. 40, is repealed in part by the Preferential Payments in Bankruptcy Act, 1888, and see the Amendment Act, 1897. These Acts now govern priority of payments of rate and wages in winding up and in administration of insolvent estates. (*Re Leng*, (1895) 1 Ch. 652; *Re Heywood*, (1897) 2 Ch. 593.) In debenture actions a direction will be inserted in the judgment for an inquiry as to preferential creditors. (*Re Meary*, W. N. (99) 58; *Re Birmingham Breweries Co.*, W. N. (99) 92; *Re Barnby's (Lim.)*, W. N. (99) 103.)

Rent, Power to Distrain for.—B. A. 1883, s. 42, as amended by B. A. 1890, s. 28, does not apply to a company in liquidation, *Re Coal Consumers' Co.*, 4 C. D. 625; nor to an order for administration. (*Re Fryman*, 38 C. D. 468.)

Reputed Ownership.—B. A. 1883, s. 44, s.s. (iii). This is not imported into the winding-up of companies. (*Crumlin Viaduct Co.*, 11 C. D. 755; *Gorringe* v. *Irwell, &c., Co.*, 34 C. D. 128.)

Rights of Creditors under Execution.—B. A. 1883, s. 45, restricting the rights of creditors under an execution is not made applicable to the administration of insolvent estates. (*Pratt* v. *Inman*, 43 C. D. 175; cf. *Hasluck* v. *Clark*, (1898) 2 Q. B. 28.)

Duties of Sheriff on Execution.—B. A. 1883, s. 46, sub-section 2 of which is repealed by B. A. 1890, s. 29, and is replaced by B. A. 1890, s. 11, s.s. 2, does not, it would seem, apply to a winding up. (Cf. *Re Withernsea Brick Works*, 16 C. D. 337; *Re Richards*, 11 C. D. 676, decided on the corresponding provision in B. A. 1869, s. 87; *Re Mackenzie*, 15 Times Rep. 526.)

Voluntary Settlements, Avoidance of.—B. A. 1883, s. 47, does not apply to administrations of estates under B. A. 1883, s. 125. (*Ex p. Official Rec., Re Gould*, 19 Q. B. D. 92.)

Provision to Bind Crown.—B. A. 1883, s. 150, which takes away the remedies of the Crown, is not brought into the winding-up Act. It may, however, be that so much of the B. A. 1883, as relates to the Crown's priority is imported into winding-up proceedings by J. A. 1875, s. 10. (*Re Oriental Bank*, 28 C. D. 649.)

See further (nn.) "Administration in Bankruptcy," &c., p. 461; "And in the winding up," &c., p. 462; "Of Secured Creditors," &c., p. 462.

Jud. Act, 1875, s. 11, s.s. 1, 2.

Provision as to option for any plaintiff (subject to rules) to choose in what division he will sue,—in substitution for 36 & 37 Vict. c. 66, s. 35.

11. Subject to any rules of court and to the provisions of the principal Act and this Act and to the power of transfer, every person by whom any cause or matter may be commenced in the High Court shall assign such cause or matter to one of the divisions of the High Court as he may think fit, by marking the document by which the same is commenced with the name of such division, and giving notice thereof to the proper officer of the court: Provided that—

"**Subject,**" **&c.**—This power of choosing the division is to some extent fettered by J. A. 1873, s. 34. *supra*, which defines what subjects shall be assigned to certain divisions; also by s. 36, which, with O. 49, gives power to transfer. But the jurisdiction of all the judges of the High Court is now the same (J. A. 1873, s. 16), and each has power to retain and deal with any action, although not assigned according to the provisions of the principal Act. See s.s. 2, *infra*.

"**As he may think fit.**"—See s.s. 3, *infra*.

(1.) All interlocutory and other steps and proceedings in or before the High Court in any cause or matter subsequent to the commencement thereof, shall be taken (subject to any rules of court and to the power of transfer) in the division of the High Court to which such cause or matter is for the time being attached; and,

"**Interlocutory Orders.**"—See O. 50. Appeal from, J. A. 1894, s. 1, s.s. 1 (b), p. 517. *post*.

"**Other Steps.**"—See J. A. 1873, s. 24, s.s. 5 (n.), p. 403; *Re Artistic Colour, &c., Co.*, 14 C. D., p. 505.

"**Transfer.**"—O. 49.

(2.) If any plaintiff or petitioner shall at any time assign his cause or matter to any division of the High Court to which, according to the rules of court or the provisions of the principal Act or this Act, the same ought not to be assigned, the court, or any judge of such division, upon being informed thereof, may, on a summary application at any stage of the cause or matter, direct the same to be transferred to the division of the said court to which, according to such rules or provisions, the same ought to have been assigned, or he may, if he think it expedient so to do, retain the same in the division in which the same was commenced; and all steps and proceedings whatsoever taken by the plaintiff or petitioner or by any other party in any such cause or matter, and all orders made therein by the court or any judge thereof before any such transfer shall be valid and effectual to all intents and purposes in the same manner as if the same respectively had been taken and made in the proper division of the said court to which such cause or matter ought to have been assigned.

"**Rules of Court, or the provisions of,**" **&c.**—O. 5, rr. 5—9. Assignment, J. A. 1873, s. 34, p. 425.

"**Direct same to be transferred.**"—See J. A. 1873, s. 36, p. 427; transfer, O. 49. Form of Motion, D. C. F., p. 280.

"**The Court . . . may . . . retain.**"—Cf. J. A. 1873, s. 16, (n.) "Jurisdiction," p. 390; *ibid.* s. 34, p. 425. In *Pinney* v. *Hunt*,

Jud. Act, 1875, ss. 11—13.

6 C. D. 98, plts. claimed partition, and that a certain will might be established, and directions given for its probate; Jessel, M.R., retained the action, leaving plt. to get probate in the P. D. And see *Bradford* v. *Young*, 26 C. D., p. 667; *Re Giles*, 8 R. 273; *Plumbley* v. *Perriman*, W. N. (91) 64. An application to the wrong division may be punished by costs. (*Re Pollard*, 20 Q. B. D., p. 667.) As to the exercise of the jurisdiction, see J. A. 1873, s. 23 (n.), p. 398.

(3.) Subject to Rules of Court, a person commencing any cause or matter shall not assign the same to the Probate, Divorce, and Admiralty Division unless he would have been entitled to commence the same in the Court of Probate, or in the Court for Divorce and Matrimonial Causes, or in the High Court of Admiralty, if this Act had not passed.

Cross References.—Choice of Division, O. 5, r. 5. Transfer and Consolidation, O. 49. Assignment to Division, J. A. 1873, s. 34. Power to assign to Judge taken away, O. 5, r. 9. Cause assigned to Judge may be heard by other Judge without transfer, J. A. 1884, s. 6. Prize Court Causes, J. A. 1891, s. 4, s.s. 2.

Subject to Rules."—Cf. O. 5, r. 5. As to Divorce and Matrimonial causes, see J. A. 1873, s. 34; O. 68, r. 1; and s. 18, *infra*.

Sittings of Court of Appeal.

12. Every appeal to the Court of Appeal shall, where the subject-matter of the appeal is a final order, decree, or judgment, be heard before not less than three judges of the said court sitting together, and shall, when the subject-matter of the appeal is an interlocutory order, decree, or judgment, be heard before not less than two judges of the said court sitting together.

Any doubt which may arise as to what decrees, orders, or judgments are final, and what are interlocutory, shall be determined by the Court of Appeal.

Subject to the provisions contained in this section, the Court of Appeal may sit in two divisions at the same time.

"**Appeal.**"—O. 58.

"**Not less than three,**" **&c.**—See *Miller* v. *Pilling*, 9 Q. B. D., p. 740. On consent of all parties, filed appeals and motions may now be heard by two judges. J. A. 1899, *post*, p. 524.

"**Final,**" "**Interlocutory.**"—See O. 58, rr. 3 and 15 (n.). As to interlocutory appeals, see J. A. 1894, s. 1, s.s. 1 (b), p. 517, *post*.

"**Order . . . Judgment.**"—See definition of terms, J. A. 1873, s. 100.

Amendment of s. 60 of 36 & 37 Vict. c. 66, as to district registrars.

13. Whereas by section sixty of the principal Act it is provided that for the purpose of facilitating the prosecution in country districts of legal proceedings, it shall be lawful for Her Majesty by order in council from time to time to direct that there shall be district registrars in such places as shall be in such order mentioned for districts to be thereby defined; and whereas it is expedient to amend the said section, be it therefore enacted that—

Where any such order has been made, two persons may, if required, be appointed to perform the duties of district registrar in any district named in the order, and such persons shall be deemed to be joint district registrars, and shall perform the said duties in such manner as may from time to time be directed by the said order, or any order in council amending the same.

Jud. Act, 1875, ss. 13—17.

Moreover, the registrar of any inferior court of record having jurisdiction in any part of any district defined by such order (other than a county court) shall, if appointed by Her Majesty, be qualified to be a district registrar for the said district or for any and such part thereof as may be directed by such order or any order amending the same.

Every district registrar shall be deemed to be an officer of the Supreme Court, and be subject accordingly to the jurisdiction of such court, and of the divisions thereof.

Cross References.—District Registrars generally, J. A. 1873, ss. 60—66; App. Jur. Act, 1876, s. 22; J. A. 1881, s. 22. Proceedings in District Registries.—O. 35 (n.).

"**Order in Council.**"—As to the districts in which District Registrars have been appointed by Order in Council, see J. A. 1873, s. 60 (n.), p. 443.

Amendment of 36 & 37 Vict. c. 66, s. 87, as to enactments relating to attorneys.

14. [This section as revised enacts that the registrar of attorneys and solicitors in England shall be called "the registrar of solicitors."]

Solicitors.—See this (n.), J. A. 1873, s. 87, p. 448. By the repealed portion of this section power was given to certain judges "by regulation to adapt any enactments relating to attorneys and any declaration, certificate, or form required under those enactments to the solicitors of the S. C., under s. 87 of the principal Act." By the Solicitors Act, 1877, s. 23, the regulations made in pursuance of such power are to cease from the 1st Jan., 1878. And regulations were made under this Act (the Solicitors Act) by the Incorporated Law Society. See 22 Sol. Jo. 168.

The powers given by s. 14, before its alteration, were vested in the M. R. with the concurrence of the L. C. or L. C. J.; see J. A. 1881, s. 24. See the Solicitors Act, 1888, and Solicitors Act, 1899, referred to, Additional Notes, Pt. IV., p. 356.

Appeal from inferior court of record.

15. It shall be lawful for Her Majesty from time to time, by order in council, to direct that the enactments relating to appeals from county courts shall apply to any other inferior court of record; and those enactments, subject to any exceptions, conditions, and limitations contained in the order, shall apply accordingly, as from the date mentioned in the order.

J. A. 1873, ss. 45, 88. J. A. 1884, s. 23. O. 59, rr. 4—10, 17.

As to Vice-Chancellor's Court, Oxford, see Order in Council, 23 Aug., 1894, Pt. VI., p. 631.

Rules in First Schedule in substitution for 36 & 37 Vict. c. 66, s. 69, and schedule.

16. [Rep. by S. L. Rev. Act, 1883, as from 24th Oct., 1883, on which date the R. S. C., 1883, came into operation. This section gave effect to the R. S. C., 1883, as far as such rules leave the former rules unaltered. See judgment of Fry, L.J., *Re Mills*, 34 C. D., pp. 41—42.]

Provision as to making, &c., of rules of court before or after the commencement

17. Her Majesty may at any time after the passing and before the commencement of this Act, by order in council, made upon the recommendation of the Lord Chancellor, and the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, and the Lords Justices of Appeal in Chancery, or any five of them, and the other judges of the several courts intended to be united and

Jud. Act, 1875, s. 17, s.s. 1—3.

consolidated by the principal Act as amended by this Act, or of a majority of such other judges, make any further or additional rules of court for carrying the principal Act and this Act into effect, and in particular for all or any of the following matters, so far as they are not provided for by the rules in the first schedule to this Act; that is to say,

of the Act,—in substitution for 36 & 37 Vict. c. 66, ss. 68, 69, 74, and schedule.

"**Made upon the Recommendation of the L. C.,**" &c.—By s. 17 of the App. Jur. Act, 1876, this power of rule making was conferred upon certain judges. Then by the J. A. 1881, s. 19, the power so conferred by the App. Jur. Act, 1876, upon the "several judges therein mentioned" was vested in the body now known as the "Rule Committee," as to which see J. A. 1881, s. 19, p. 496.

(1.) For regulating the sittings of the High Court and of any divisional or other Courts thereof, and of the judges of the High Court sitting in chambers; and,

(2.) For regulating the pleading, practice, and procedure in the High Court and Court of Appeal; and,

"**Procedure.**"—The Rule Committee (see (n.) "Made upon," &c. *supra*) have power to make a rule empowering the making of a vesting order on summons (see O. 55, r. 13 (a)), it being a point of "practice or procedure" hereunder. (*Re Jones*, 38 W. R. 203.) See also s. 24, *infra*. The mode in which a trial by jury is to be conducted is a matter of procedure, *e.g.*, R. S. C. (1883) O. 22, r. 22; *Williams* v. *Goose*, (1897) 1 Q. B., p. 472.

And, when power is given (J. A. 1873, s. 26), may in such matters as procedure and practice alter an Act of Parliament. See s. 24, *infra*; *Re Oliver, &c.*, 43 C. D. 310, cited O. 64, r. 14 (a).

(3.) Generally, for regulating any matters relating to the practice and procedure of the said courts respectively, or to the duties of the officers thereof, or of the Supreme Court, or to the costs of proceedings therein.

"**Costs.**"—See O. 65, r. 1 (n.); J. A. 1890, s. 5 (n.).

In substitution for 36 & 37 Vict. c. 66, s. 74.

The Supreme Court may at any time, with the concurrence of a majority of the judges thereof present at any meeting for that purpose held (of which majority the Lord Chancellor shall be one), alter and annul any rules of court for the time being in force, and have and exercise the same power of making rules of court as is by this section vested in Her Majesty in council on the recommendation of the said judges before the commencement of this Act.

Rule Committee.—See (n.) "Made upon," &c., *supra*, and J. A. 1881, s. 19 (n.), p. 496.

"**At any Meeting.**"—See J. A. 1873, s. 75.

All rules of court made in pursuance of this section shall be laid before each House of Parliament within such time and shall be subject to be annulled in such manner as is in this Act provided.

"**Laid before Parliament.**"—See s. 25, *infra*, (n.) "Laying Rules before Parliament," J. A. 1881, s. 19, p. 496: App. Jur. Act, 1876, s. 17. Orders in Council, s. 23, *infra*. See Rules Publication Act, p. 525, *post*.

Jud. Act, 1875, ss. 17, 18.

All rules of court made in pursuance of this section, shall from and after the commencement of this Act, and if made after the commencement of this Act shall from and after they come into operation, regulate all matters to which they extend, until annulled, or altered in pursuance of this section.

"**Until annulled.**"—See s. 25, *infra*, and (n.).

The reference to certain judges in section twenty-seven of the principal Act shall be deemed to refer to the judges mentioned in this section as the judges on whose recommendation an order in council may be made.

As altered by S. L. Rev. Act, 1883, and S. L. Rev. (No. 2) Act, 1893.

Cross References.—By App. Jur. Act, 1876, s. 16, so much of this section is repealed as relates to the regulation of any matters subject to that section, &c. &c., but that section is repealed by S. L. Rev. Act, 1883. And the powers of this section are extended by S. L. Rev. and Civil Pro. Acts, 1881 and 1883. As to rules for Probate and Admiralty, s. 18, *infra*. As to modifying procedure in Acts of Parliament, and as to payments into and out of Court, &c., s. 24, *infra*. As to laying rules before Parliament, s. 25, *infra*. As to Rule Committee and power of making rules, J. A. 1881, s. 19 (n.); Rules Publication Act, 1893; J. A. 1894, ss. 3—6, *post*. As to regulating sittings of C. A., App. Jur. Act, 1876, s. 16. As to rules of inferior Courts, J. A. 1884, s. 24. As to appeals from inferior Courts, J. A. 1884, s. 23.

"**Rules of Court.**"—As to the Rule Committee, see J. A. 1881, s. 19, p. 496. As to force and effect of Rules, see (n.) "Construction of Judicature Acts," &c., Additional Notes, Pt. IV., p. 327; and cf. J. A. 1873, s. 23, and (n.).

"**From and after they come into operation, regulate,**" **&c.**—Notwithstanding these words the C. A. seem to have given a retrospective effect to O. 65, r. 11; see *Brown* v. *Burdett*, 37 C. D. 207.

As to the effect upon O. 65, r. 12 of the Cty. Ct. Act, 1888, s. 116, cf. *Millington* v. *Harwood*, (1892) 2 Q. B. 171.

Provision as to rules of Probate, Divorce, and Admiralty Courts, being rules of the High Court in substitution for 36 & 37 Vict. c. 66, s. 70.

18. All rules and orders of court in force at the time of the commencement of this Act in the Court of Probate, the Court for Divorce and Matrimonial Causes, and the Admiralty Court, or in relation to appeals from the Chief Judge in Bankruptcy, or from the Court of Appeal in Chancery, in bankruptcy matters, shall remain and be in force in the High Court and in the Court of Appeal respectively until they shall respectively be altered or annulled by any rules of court made after the commencement of this Act.

The president for the time being of the Probate and Divorce Division of the High Court shall have, with regard to non-contentious or common form business in the Probate Court, the powers now conferred on the judge of the Probate Court by the thirtieth section of the twentieth and twenty-first years of Victoria, chapter seventy-seven, and the said president shall have the powers as to the making of rules and regulations conferred by the fifty-third section of the twentieth and twenty-first years of Victoria, chapter eighty-five.

The Probate practice was, by the Probate Act, 1857, s. 29, to be according to that of the Prerogative Court, unless altered by that Act. Then by this section such rules are to remain in force until altered. There has been no alteration under either Act, and the R. S. C. do not apply either in contentious business (*Druce* v. *Young*, (1899) P., p. 101), or in non-contentious. (*In the goods of Caspari*, 75 L. T. 663.)

Jud. Act, 1875, ss. 18—22.

Divorce and matrimonial causes are excepted from R. S. C., O. 68, r. 1. As to divorce appeals, see J. A. 1881, s. 9, *infra*, p. 492. Bankruptcy appeals, B. A. 1883, s. 104; Bankruptcy (Cty. Ct.) Act, 1884.

19. [Provision as to practice and procedure in criminal matters and crown cases reserved remaining unaltered,—in substitution for 36 & 37 Vict. c. 66, s. 71.]

See J. A. 1873, s. 47 (n.), O. 68, r. 1.

Provision as to Act not affecting rules of evidence or juries,—in substitution for 36 & 37 Vict. c. 66, s. 2.

20. Nothing in this Act or in any rules of court to be made under this Act, save as far as relates to the power of the Court for special reasons to allow depositions or affidavits to be read, shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the rules of evidence, or the law relating to jurymen or juries.

"**Giving Evidence**"—*Evidence generally.*—O. 37; O. 38; Affidavits, O. 38: Changes in Law of Evidence, see as to proof of particular facts, J. A. 1894, s. 3, p. 521; O. 30, r. 7; O. 36, r. 37.

"**Or the law relating to jurymen,**" &c.—See O. 36, r. 6.

Provision for saving of existing procedure of courts when not inconsistent with this Act or rules of court,—in substitution for 36 & 37 Vict. c. 66, s. 73.

21. Save as by the principal Act or this Act, or by any rules of court, may be otherwise provided, all forms and methods of procedure which at the commencement of this Act were in force in any of the courts whose jurisdiction is by the principal Act or this Act transferred to the High Court and to the Court of Appeal respectively, under or by virtue of any law, custom, general order, or rules whatsoever, and which are not inconsistent with the principal Act or this Act or with any rules of court, may continue to be used and practised, in the High Court of Justice and the Court of Appeal respectively, in such and the like cases, and for such and the like purposes, as those to which they would have been applicable in the respective courts of which the jurisdiction is so transferred, if the principal Act and this Act had not passed.

See (n.) "Where no Rule or Variance," Additional Notes, Pt. IV., p. 328; J. A. 1873, s. 23.

"**All forms and methods,**" &c.—As to saving of existing procedure, see O. 72, r. 2, and cases there cited.

"**Inconsistent.**"—See this (n.), s. 33 (2), p. 475, *infra*.

Nothing in principal Act to prejudice right to have issues submitted, &c.

22. Nothing in the said Act, nor in any rule or order made under the powers thereof or of this Act, shall take away or prejudice the right of any party to any action to have the issues for trial by jury submitted and left by the judge to the jury before whom the same shall come for trial, with a proper and complete direction to the jury upon the law, and as to the evidence applicable to such issues:

Provided also, that the said right may be enforced either by motion in the High Court or by motion in the Court of Appeal founded upon an exception entered upon or annexed to the record.

Cross References.—Cf. J. A. 1873, ss. 29, 46; App. Jur. Act, 1876, s. 17; Mode of Trial, O. 36, Part 2. New Trial, O. 39, rr. 1, 6 (n.).
"**Issues.**"—O. 33.
"**Trial by Jury.**"—O. 36, rr. 2—10.
"**Upon an exception,**" &c.—Where there was no record, the C. A. ordered notice of motion to be given. (*Cheese* v. *Lovejoy*, 2 P. D. 161.)

Regulation of circuits.

23. Her Majesty may, from time to time, by Order in Council, provide in such manner and subject to such regulations as to Her Majesty may seem meet, for all or any of the following matters:

1. For the discontinuance, either temporarily or permanently, wholly or partially, of any existing circuit, and the formation of any new circuit by the union of any counties or parts of counties, or partly in one way and partly in the other, or by the constitution of any county or part of a county to be a circuit by itself; and in particular for the issue of commissions for the discharge of civil and criminal business in the county of Surrey to the judges appointed to sit for the trial by jury of causes and issues in Middlesex or London or any of them; and,

2. For the appointment of the place or places at which assizes are to be holden on any circuit; and,

3. For altering by such authority and in such manner as may be specified in the order, the day appointed for holding the assizes at any place on any circuit in any case, where, by reason of the pressure of business or other unforeseen cause, it is expedient to alter the same; and,

4. For the regulation, so far as may be necessary for carrying into effect any order under this section, of the venue in all cases, civil and criminal, triable on any circuit or elsewhere.

Order in Council.

Her Majesty may from time to time, by Order in Council, alter, add to, or amend any Order in Council made in pursuance of this section; and in making any order under this section may give any directions which it appears to Her Majesty to be desirable to give for the purpose of giving full effect to such order.

Provided that every Order in Council made under this section shall be laid before each House of Parliament within such time, and shall be subject to be annulled in such manner as is in this Act provided.

Any Order in Council purporting to be made in pursuance of this section shall have the same effect in all respects as if it were enacted in this Act.

The power hereby given by Her Majesty shall be deemed to be in addition to and not in derogation of any power already vested in Her Majesty in respect of the matters aforesaid; and all enactments in relation to circuits, or the places at which assizes are to be holden, or otherwise in relation to the subject-matter of any order under this section, shall, so far as such enactments are inconsistent with such order, be repealed thereby, whether such repeal is thereby expressly made or not; but all enactments relating to the power of Her Majesty to alter the circuits of the judges, or places at which assizes are to be holden, or the distribution of revising barristers among the circuits, or otherwise enabling or

Jud. Act, 1875, ss. 23, 24.

facilitating the carrying the objects of this section into effect, and in force at the time of the passing of the principal Act, shall continue in force, and shall, with the necessary variations, if any, apply, so far as they are applicable, to any alterations in or dealings with circuits, or places at which assizes are to be holden, made or to be made after the passing of this Act, or to any other provisions of any Order made under this section; and if any such order is made for the issue of commissions for the discharge of civil and criminal business in the county of Surrey as before mentioned in this section, that county shall for the purpose of the application of the said enactments be deemed to be a circuit, and the senior judge for the time being so commissioned, or such other judge as may be for the time being designated for that purpose by Order in Council, shall, in the month of July or August in every year, appoint the revising barristers for that county and the cities and boroughs therein.

The expression "assizes" shall in this section be construed to include sessions under any commission of oyer and terminer, or gaol delivery, or any commission in lieu thereof issued under the principal Act.

"**Her Majesty may,**" &c.—The Queen in Council has now full power over circuits, counties and assize towns, so that any circuit may be suppressed, any area added to or taken from a circuit, any district whatever appointed to have an assize town for its centre, and any assize town deprived of its privileges.

"**By Order in Council.**"—By Orders in Council (Pt. VI., p. 628, *post*), continuous common law sittings in town and continuous circuits are provided as and from the 1st day of October, 1893.

"**Shall be laid,**" &c.—See s. 25.

"**Annulled in such manner.**"—See s. 25, *infra*.

"**Assizes.**"—See Interpretation Act, 1889, s. 13.

"**Circuit.**"—As to jurisdiction on, see J. A. 1873, s. 29.

Additional power as to regulation of practice and procedure by rules of court.

24. Where any provisions in respect of the practice or procedure of any courts the jurisdiction of which is transferred by the principal Act or this Act to the High Court or the Court of Appeal, are contained in any Act of Parliament, rules of court may be made for modifying such provisions to any extent that may be deemed necessary for adapting the same to the High Court and the Court of Appeal, without prejudice nevertheless to any power of the Lord Chancellor, with the concurrence of the Treasury, to make any rules with respect to the Paymaster-General, or otherwise.

Any provisions relating to the payment, transfer, or deposit into, or in or out of any court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provisions relating to practice and procedure.

The Lord Chancellor, with the concurrence of the Treasury, may from time to time, by order, determine to what accounts and how intituled any such money or property as last aforesaid, whether paid, transferred, or deposited before or after the commencement of this Act, is to be carried, and modify all or any forms relating to such accounts; and the Bank of England, and all other companies, bodies corporate, and persons, shall make such entries and alterations in their books as may be directed by the Lord Chancellor, with the concurrence of the Treasury, for the purpose of carrying into effect any such order.

"**Rules of Court.**"—See J. A. 1881, s. 19, (n.) "Rule Committee," p. 496.

This section has enlarged very much the power of rule-making in matters of procedure. (*Gloucestershire Banking Co.* v. *Phillipps*, 12 Q. B. D., p. 537.) Whether the Act gives jurisdiction over costs, where such did not previously exist, *quære*. (*Re Wood*, 31 C. D. 607; *Re Mills*, 34 C. D. 24, but see J. A. 1890, s. 5 (n.), p. 511.)

"**To the Payment,**" **&c.**—Cf. s. 17, *supra*; and as to the practice of payment in, O. 22 (n.). And see S. C. F. R. 1894, &c., Pt. III., p. 256.

Orders and Rules to be laid before Parliament, and may be annulled on address from either House.

25. Every Order in Council and Rule of Court required by this Act to be laid before each House of Parliament shall be so laid within forty days next after it is made, if Parliament is then sitting, or if not, within forty days after the commencement of the then next ensuing session; and if an address is presented to Her Majesty by either House of Parliament, within the next subsequent forty days on which the said House shall have sat, praying that any such Rule or Order may be annulled, Her Majesty may thereupon by Order in Council annul the same; and the Rule or Order so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

"**Required by this Act,**" **&c.**—See as to Rules, s. 17: App. Jur. Act, 1876, s. 17, and especially J. A. 1881, s. 19 (nn.), p. 496. As to Orders in Council, s. 23. Rules of Court after they come into operation are to regulate all matters to which they extend *until* annulled or altered as in this Act provided, see s. 17, *supra*; Rules Publication Act, p. 525, *post*.

"**May be annulled * * * but without prejudice.**"—Cf. s. 17, *supra*, and *De Bernales* v. *Bennett*, 10 Times Rep., p. 419 (C. A.).

Fixing and collection of fees in High Court and Court of Appeal.

26. The Lord Chancellor, with the advice and consent of the judges of the Supreme Court or any three of them, and with the concurrence of the Treasury, may, by order, fix the fees and per-centages [including the per-centage on estates of lunatics] to be taken in the High Court or in the Court of Appeal, or in any court created by any commission, or in any office which is connected with any of those courts, or in which any business connected with any of those courts is conducted, or by any officer paid wholly or partly out of public moneys who is attached to any of those courts or the Supreme Court, or any judge of those courts [including the masters and other officers in lunacy], and may from time to time by order increase, reduce or abolish all or any of such fees and per-centages, and appoint new fees and per-centages to be taken in the said courts or offices or any of them, or by any such officer as aforesaid.

Any order made in pursuance of this section shall be binding on all the courts, offices, and officers to which it refers, in the same manner as if it had been enacted by Parliament.

(3.) The Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules as may seem fit for publishing the amount of the fees.

An order under this section may abolish any existing fees and per-centages which may be taken in the said courts or offices, or any of them, or by the said officers or any of them, but, subject to the provisions of any order made in pursuance of this section, the

Jud. Act, 1875, ss. 26—33.

existing fees and per-centages shall continue to be taken, applied, and accounted for in the existing manner.

The sentences in brackets are repealed by the Lunacy Act, 1890.

"**The Treasury . . . may.**"—See generally as to Court Fees, Pt. II. See Public Offices Fees Act, 1879; and as to fees to be taken by stamps, see Treasury Order issued under this section, 4th July, 1884, Pt. II., p. 214.

27. [Provision as to Lancaster Fee fund and salaries of officers of the courts at Lancaster and Durham.]

Repealed by S. L. Rev. Act, 1883.

28. [Annual account of fees and expenditure by Treasury.]

See 83 L. T. Jo. 364. This section is (*semble*) partially suspended by the Public Offices Fees Act, 1879.

29. [Amendment of law as to payments to senior puisne judge, &c., and as to salary of Queen's Coroner and Attorney.]

30. Rules may from time to time be made in pursuance of section eighteen of "The Court of Chancery Funds Act, 1872," with respect to the investment in securities of money in court, and the conversion into money of securities in court, and with respect to the transfer to the Commissioners for the Reduction of the National Debt of Government securities ordered by the court to be sold or converted into cash, and to the transfer by those commissioners to the Paymaster-General for the time being, on behalf of the Court of Chancery, of Government securities ordered by the Court of Chancery to be purchased.

This section shall be construed together with "The Court of Chancery Funds Act, 1872," and shall be subject to any alteration in that Act made by or in pursuance of the principal Act or this Act.

Chancery Funds Acts.—See Pt. III., p. 247 *et seq.*, and J. A. 1894, s. 6, p. 522.

31. [Abolition of secretary to the visitors of lunatics.]

Rep. S. L. Rev. Act, 1883.

32. [Amendment of Bankruptcy and Insolvency Acts, 32 & 33 Vict. c. 83, s. 19, and 32 & 33 Vict. c. 71, s. 116, as to payment of unclaimed bankruptcy dividends.]

Rep. by Bankruptcy Act, 1883.

Repeal.

33. There shall be repealed—

(2.) Any enactment inconsistent with this Act or the principal Act.

As altered by S. L. Rev. Act, 1883, and S. L. Rev. (No. 2) Act, 1893.

"**Shall be repealed.**"—Cf. Statute Law Revision and Civil Procedure Act (1883), s. 6 (*b*), and *Buckley* v. *Hull, &c., Coy.*, (1893) 2 Q. B. 93, *infra*. This section, together with O. 55, r. 1, now (O. 65, r. 1) repealed rule 62 of the Rules of Hilary Term, 1853 (the whole of which are now repealed, see App. O., Pt. I., p. 212). (*Myers* v. *Defries*, 5 Ex. D. 15, 180. See also *Rackett* v. *Clippingdale*, (1891) 2 Q. B. 293.)

As to explaining the meaning of an enactment by reference to an enactment which it repeals, see *A.-G.* v. *Lamplough*, 3 Ex. D. 214.

"**Inconsistent.**"—As to the canon of construction for deciding what enactments are or are not inconsistent, &c., see Lord Blackburn's judgment in *Garnett* v. *Bradley*, 3 App. Cas., p. 965; and cf. *Re Mills*, 34 C. D., p. 33, and ss. 17 and 24, *supra*.

As to retaining former procedure under any law, custom, order or rules, not inconsistent with the Judicature Acts, see s. 21, *supra*.

The Rules (1883) must not be taken as being inconsistent with the Act. (*Re Fawsitt*, 30 C. D., p. 235.)

The 8 & 9 Vict. c. 106, s. 3, requiring a lease to be by deed, is not (*semble*) repealed by this section. See *Furness* v. *Bond*, W. N. (88) 78.

A certain local Act of 1774 required actions under it to be brought in a certain town. By R. S. C. 1875, O. 36, r. 1, local venue was abolished. The R. S. C. (1875) were repealed by the Statute Law Revision Act, 1883, and superseded by the R. S. C. 1883. By O. 36, r. 1, an exception is made in favour of local venue provided by statute; but by the Statute Law Revision and Civil Procedure Act, s. 6 (b), *post*, no enactment repealed by this section is to be revived by reason of the annulment or alteration by any new rules of the rules contained in the schedule to the Act. Held, that the qualification in O. 36, r. 1, applies only to statutes passed since 1875, and that the local venue given by the local Act was gone. (*Buckley* v. *Hull, &c., Co.*, (1893) 2 Q. B. 93.)

34. [Rep. S. L. Rev. Act, 1883.]

35. [Amends s. 79 of principal Act as to office and salary of chamber clerks.]

FIRST SCHEDULE.

[This schedule (see section 16, *ante*) contained the Rules of the Supreme Court, 1875, which were superseded by R. S. C. 1883, see App. O., Pt. I., p. 212, and both the schedules were repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).]

SECOND SCHEDULE.

[This schedule repealed sections of the Bankruptcy and other Acts which it is not necessary to notice for the purposes of this work, and also the following sections of the Judicature Act of 1873:—"So much of sections three and sixteen as relates to the London Court of Bankruptcy, section six, section nine, section ten, so much of section thirteen as relates to additional judges of the Court of Appeal, section thirty-four from 'all matters pending in the London Court of Bankruptcy' to 'London Court of Bankruptcy,' section thirty-five, section forty-eight, section fifty-three, section sixty-three, section sixty-eight, section sixty-nine, section seventy, section seventy-one, section seventy-two, section seventy-three, section seventy-four, and the whole of the schedule."]

This schedule is rep. by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).

THE

APPELLATE JURISDICTION ACT, 1876.

(39 & 40 VICT. c. 59.)

Note.—This Act is printed with the amendments made by the Appellate Jurisdiction Act, 1887.

An Act for amending the Law in respect of the Appellate Jurisdiction of the House of Lords; and for other purposes.
[11th August, 1876.]

App. Jur. Act, 1876, ss. 1—3.

Preliminary.

1. This Act may be cited for all purposes as "The Appellate Jurisdiction Act, 1876."

Short title.

2. [Which provides that the Act shall come into operation on the 1st Nov. 1876, is repealed by S. L. Rev. Act, 1894.]

Appeal.

Appeal to the House of Lords.

3. Subject as in this Act mentioned an appeal shall lie to the House of Lords from any order or judgment of any of the Courts following; that is to say,

England.

(1.) Of Her Majesty's Court of Appeal in England; and

Scotland.

(2.) Of any Court in Scotland from which error or an appeal at or immediately before the commencement of this Act lay to the House of Lords by common law or by statute; and

Cf. ss. 12, 25.

Ireland.

(3.) Of any Court in Ireland from which error or an appeal at or immediately before the commencement of this Act lay to the House of Lords by common law or by statute.

Cf. ss. 12, 25, and (n.) "Order or judgment," *infra*.

"**Ireland.**"—No appeal lies from a decision of the Irish C. A. upon motion. The Irish practice differs in this respect from the English. (*Reg.* v. *Runciman*, 28 L. R. Ir. 550.) See (n.) "Interlocutory," &c., p. 477.

Cross References.—As to the practice and procedure on appeals in House of Lords, see Pt. VII., p. 642.

As to fiat of Attorney-General in certain cases as preliminary to appeal, see s. 10. As to Divorce, Matrimonial and Legitimacy Appeals, see J. A. 1881, ss. 9, 10. Bankruptcy appeals, see B. A. 1883, s. 104. Scotch and Irish appeals, s. 12, *infra*. As to imposing conditions on appeals, see s. 11, *infra*. Stay of execution pending appeal, see O. 58, r. 16 (n.). As to appeals from interlocutory orders, *Garnett* v. *Bradley*, 3 App. Ca. 944; *Lyell* v.

Kennedy, 8 App. Cas. 217; *Ford's Hotel Co.* v. *Bartlett*, (1896) A. C. 1. Appeal as to costs to House of Lords, O. 65, r. 1, (n.) "Appeals to House of Lords."

"**From any Order or Judgment.**"—See (n.) "Judgment or order," J. A. 1873, s. 19, p. 394, also interpretation clause, J. A. 1873, s. 100, p. 456.

Interlocutory order. Action dismissed: no appeal.—See *Steers* v. *Rogers*, (1893) A. C. 233.

Interlocutory Order, Ireland.—There is no appeal to the H. of L. on an interlocutory order of the C. A. in Ireland. (*Gosford* v. *Irish Land Com.*, (1899) A. C. 435.)

Difference of opinion. Appeal, &c., heard by two Lords Justices.—Must be re-argued, before appeal to H. of L. J. A. 1899, p. 524.

Refusal of leave to appeal.—If the C. A. refuses special leave to appeal from a judgment of High Court where the time for appealing has expired, under O. 58, r. 15, there is no appeal from such refusal; it is not an "order or judgment" hereunder. (*Lane* v. *Esdaile*, (1891) A. C. 210.)

Appeals in Formâ Pauperis.—See the Appeal (Formâ Pauperis) Act, 1893, p. 525, and Appeals to House of Lords, (n.) "Paupers," Pt. VII., p. 644.

Form of appeal to House of Lords.

4. Every appeal shall be brought by way of petition to the House of Lords, praying that the matter of the order or judgment appealed against may be reviewed before Her Majesty the Queen in her Court of Parliament, in order that the said Court may determine what of right, and according to the law and custom of this realm, ought to be done in the subject-matter of such appeal.

See Practice, Forms, Standing Orders, Pt. VII., p. 642.

Appeals in Formâ Pauperis.—See the Appeal (Formâ Pauperis) Act, 1893, *post*, p. 525.

Quorum and description of "Lords of Appeal."

5. An appeal shall not be heard and determined by the House of Lords unless there are present at such hearing and determination not less than three of the following persons, in this Act designated Lords of Appeal; that is to say,

(1.) The Lord Chancellor of Great Britain for the time being; and

(2.) The Lords of Appeal in Ordinary to be appointed as in this Act mentioned; and

(3.) Such Peers of Parliament as are for the time being holding or have held any of the offices in this Act described as high judicial offices.

"**Unless there are present, &c.**"—This section does not exclude peers not qualified as therein mentioned, and on one occasion since the Act (*Bradlaugh* v. *Clarke*, 8 App. Cas. 354) a peer not so qualified, Lord Denman, took part in a hearing, voting with the minority.

If the House be equally divided, the judgment of the court below stands affirmed, and no costs are given. (*Pryce* v. *Monmouthshire Railway Co.*, 4 App. Cas. 197.)

"**High Judicial Offices.**"—See the definition of, s. 25, *infra*.

Appointment of two "Lords of Appeal in Ordinary."

6. For the purpose of aiding the House of Lords in the hearing and determination of appeals, Her Majesty may by letters patent appoint two qualified persons to be Lords of Appeal in Ordinary.

A person shall not be qualified to be appointed by Her Majesty a Lord of Appeal in Ordinary unless he has been at or before the time of his appointment the holder for a period of not less than two years of some one or more of the offices in this Act described as

App. Jur. Act, 1876, ss. 6—8.

high judicial offices, or has been at or before such time as aforesaid, for not less than fifteen years, a practising barrister in England or Ireland, or a practising advocate in Scotland.

Every Lord of Appeal in Ordinary shall hold his office during good behaviour, and shall continue to hold the same notwithstanding the demise of the Crown, but he may be removed from such office on the address of both Houses of Parliament.

There shall be paid to every Lord of Appeal in Ordinary a salary of six thousand pounds a year.

Every Lord of Appeal in Ordinary, unless he is otherwise entitled to sit as a member of the House of Lords, shall by virtue and according to the date of his appointment be entitled during his life to rank as a Baron by such style as Her Majesty may be pleased to appoint, and shall during the time that he continues in his office as a Lord of Appeal in Ordinary, and no longer, be entitled to a writ of summons to attend, and to sit and vote in the House of Lords; his dignity as a Lord of Parliament shall not descend to his heirs.

On any Lord of Appeal in Ordinary vacating his office, by death, resignation, or otherwise, Her Majesty may fill up the vacancy by the appointment of another qualified person.

A Lord of Appeal in Ordinary shall, if a privy councillor, be a member of the Judicial Committee of the Privy Council, and, subject to the due performance by a Lord of Appeal in Ordinary of his duties as to the hearing and determining of appeals in the House of Lords, it shall be his duty, being a privy councillor, to sit and act as a member of the Judicial Committee of the Privy Council.

"**For the purpose of aiding,**" **&c.**—See as to assessors in Admiralty appeals, J. A. 1891, s. 3, p. 515.

"**Lord of Appeal.**"—As to his taking his seat during prorogation, see s. 8 and (n.). As to increasing the number of Lords of Appeal, s. 14, *infra*.

App. Jur. Act, 1887, s. 2.—"The sixth section of the Appellate Jurisdiction Act, 1876, shall be construed and take effect, as well in respect of any Lord of Appeal in Ordinary heretofore appointed under that Act, as of any such lord hereafter appointed, so as to entitle any person so appointed to sit and vote as a member of the House of Lords during his life as fully as if the words 'during the time that he continues in his office as a Lord of Appeal in Ordinary, and no longer,' had been omitted from the said section."

"**Judicial Committee.**"—See s. 14 and (n.).

Supplemental Provisions.

7. [This section deals with the pension of Lords of Appeal.]

Hearing appeals during prorogation of parliament.

8. For preventing delay in the administration of justice, the House of Lords may sit and act for the purpose of hearing and determining appeals, and also for the purpose of Lords of Appeal in Ordinary taking their seats and the oaths, during any prorogation of Parliament, at such time and in such manner as may be appointed by order of the House of Lords made during the preceding session of Parliament; and all orders and proceedings of the said house in relation to appeals and matters connected therewith during such prorogation, shall be as valid as if Parliament had

been then sitting, but no business other than the hearing and determination of appeals and the matters connected therewith, and Lords of Appeal in Ordinary taking their seats and the oaths as aforesaid, shall be transacted by such house during such prorogation.

Under this section November sittings are held.

App. Jur. Act, 1887, s. 1.—"Whereas it is expedient that any Lord of Appeal, as defined by the Appellate Jurisdiction Act, 1876, notwithstanding that he may not be a Lord of Appeal in Ordinary within the meaning of that Act, should be empowered to take his seat and the oaths at the sittings of the House of Lords for hearing and determining appeals during the prorogation of parliament: be it enacted that, notwithstanding anything in the eighth section of the said Act contained, every Lord of Appeal shall be empowered to take his seat and the oaths at any such sitting of the House of Lords during prorogation."

Hearing of appeals during dissolution of parliament.

9. If, on the occasion of a dissolution of Parliament, Her Majesty is graciously pleased to think that it would be expedient, with a view to prevent delay in the administration of justice, to provide for the hearing and determination of appeals during such dissolution, it shall be lawful for Her Majesty, by writing under her sign manual, to authorize the Lords of Appeal, in the name of the House of Lords, to hear and determine appeals during the dissolution of Parliament, and for that purpose to sit in the House of Lords at such times as may be thought expedient; and upon such authority as aforesaid being given by Her Majesty, the Lords of Appeal may, during such dissolution, hear and determine appeals and act in all matters in relation thereto in the same manner in all respects as if their sittings were a continuation of the sittings of the House of Lords, and may in the name of the House of Lords exercise the jurisdiction of the House of Lords accordingly.

See the foot-note to *Société Générale de Paris* v. *Walker*, 11 App. Cas. 20.

Fiat of Attorney-General.

10. An appeal shall not be entertained by the House of Lords without the consent of the Attorney-General or other law officer of the crown in any case where proceedings in error or on appeal could not hitherto have been had in the House of Lords without the fiat or consent of such officer.

"**Proceedings in error.**"—The fiat of the Attorney-General is a condition precedent to the writ of error in criminal proceedings. (*Castro* v. *Murray*, 10 Ex. 213.) Cf. J. A. 1873, s. 47, and (n.) "Save for some error," p. 437, *ante*. The definition of "error" in s. 25 has been repealed.

Procedure.

11. An appeal shall not lie from any of the courts from which an appeal to the House of Lords is given by this Act, except in manner provided by this Act, and subject to such conditions as to the value of the subject-matter in dispute, and as to giving security for costs, and as to the time within which the appeal shall be brought, and generally as to all matters of practice and procedure, or otherwise, as may be imposed by orders of the House of Lords.

App. Jur. Act, 1876, ss. 12—14.

Standing Orders.

Scotland and Ireland.

12. Except in so far as may be authorized by orders of the House of Lords an appeal shall not lie to the House of Lords from any court in Scotland or Ireland in any case, which, according to the law or practice hitherto in use, could not have been reviewed by that House, either in error or on appeal.

This section indirectly authorizes the House of Lords to allow appeals from Scotch and Irish courts in cases where hitherto no appeal has lain.

See (n.) "Ireland," p. 476.

13. [Provision as to pending business.]

Repealed, S. L. Rev. Act, 1883.

Amendment of Acts.

Appointment of two additional Lords of Appeal in Ordinary on vacancy in office of paid Judges of Judicial Committee.

14. Her Majesty may appoint a third Lord of Appeal and a fourth Lord of Appeal in Ordinary in addition to the Lords of Appeal in Ordinary aforesaid; and may from time to time fill up any vacancies occurring in the offices of such third and fourth Lord of Appeal in Ordinary.

Sir Barnes Peacock, the last paid member of the Judicial Committee of the Privy Council, died in Dec. 1890.

Any Lord of Appeal in Ordinary appointed in pursuance of this section shall be appointed in the same manner, hold his office by the same tenure, be entitled to the same salary and pension, and in all respects be in the same position as if he were a Lord of Appeal in Ordinary appointed in pursuance of the power in this Act before given to Her Majesty.

Ecclesiastical assessors of Judicial Committee.

Her Majesty may, by order in council, with the advice of the Judicial Committee of Her Majesty's Privy Council, or any five of them, of whom the Lord Chancellor shall be one, and of the archbishops and bishops being members of Her Majesty's Privy Council, or any two of them, make rules for the attendance, on the hearing of ecclesiastical cases, as assessors of the said committee, of such number of the archbishops and bishops of the Church of England as may be determined by such rules.

The rules may provide for the assessors being appointed for one or more year or years, or by rotation or otherwise, and for filling up any temporary or other vacancies in the office of assessor.

Submission of rules to parliament.

Any rule made in pursuance of this section shall be laid before each House of Parliament within forty days after it is made, if Parliament be then sitting, or if not then sitting, within forty days after the commencement of the then next session of Parliament.

If either House of Parliament present an address to Her Majesty within forty days after any such rule has been laid before such House, praying that any such rule may be annulled, Her Majesty may thereupon, by order in council, annul the same, and the rule so annulled shall thenceforth become void, but without prejudice nevertheless to the making of any other rule in its place, or to the validity of anything which may in the meantime have been done under any such rule.

As to laying R. S. C. before Parliament, see (n.) "Laying Rules," &c., p. 496.

"**Judicial Committee.**"—See also s. 6, *supra*, and (n.).

App. Jur. Act, 1887, s. 3.—"The Judicial Committee of the Privy

Council as formed under the provisions of the first section of the Act of the third and fourth William the Fourth, chapter forty-one, intituled 'An Act for the better Administration of Justice in His Majesty's Privy Council,' shall include such members of Her Majesty's Privy Council as are for the time being holding or have held any of the offices in the Appellate Jurisdiction Act, 1876, and this Act, described as high judicial offices."

App. Jur. Act, 1876, ss. 14, 15.

App. Jur. Act, 1887, s. 4.—"Any person who shall in virtue of the thirtieth section of the Act of the third and fourth William the Fourth, chapter forty-one, attend the sittings of the Judicial Committee of the Privy Council, shall be deemed to be included as a member of the said committee for all purposes, and shall, if there be only one such person, be entitled to receive the whole amount of the sums by the said section provided, that is to say, eight hundred pounds for every year during which he shall so attend; but if there shall at any time be two such persons, they shall severally be entitled to the sums provided in the said section."

Prize Court.—As to appeal from High Court, when acting as, see J. A. 1891, s. 4, *post*.

Amendment of the Supreme Court of Judicature Acts in relation to Her Majesty's Court of Appeal.

15. In addition to the number of ordinary judges of the Court of Appeal authorized to be appointed by "The Supreme Court of Judicature Act, 1875," Her Majesty may appoint three additional ordinary judges of that court.

The first three appointments of additional judges under this Act shall be made by such transfer to the Court of Appeal as is in this section mentioned, of three judges of the High Court of Justice, and the vacancies so created in the High Court of Justice shall not be filled up, except in the event and to the extent hereinafter mentioned.

Every additional ordinary judge of the said Court of Appeal appointed in pursuance of this Act shall be subject to the provisions of sections twenty-nine and thirty-seven of "The Supreme Court of Judicature Act, 1873," and shall be under an obligation to go circuits and to act as commissioner under commissions of assize or other commissions authorized to be issued in pursuance of the said Act, in the same manner in all respects as if he were a judge of the High Court of Justice.

There shall be paid to every additional ordinary judge appointed in pursuance of this Act, in addition to the salary which he would otherwise receive as an ordinary judge of the Court of Appeal, such sum on account of his expenses on circuit or under such commission as aforesaid as may be approved by the Treasury upon the recommendation of the Lord Chancellor.

Subject as aforesaid, the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, for the time being in force in relation to the appointment of ordinary judges of Her Majesty's Court of Appeal, and to their tenure of office, and to their precedence, and to their salaries and pensions, and to the officers to be attached to such judges, and all other provisions relating to such ordinary judges, shall apply to the additional ordinary judges appointed in pursuance of this section in the same manner as they apply to the other ordinary judges of the said court.

For the purpose of the pension of any person appointed under this Act an additional ordinary judge of appeal, service in the High Court of Justice shall be deemed to have been service in the Court of Appeal.

The repealed portion repealed (inter alia) so much of J. A. 1875, s. 4, as provided that ordinary judges of C. A. should not exceed three.

App. Jur. Act, 1876, ss. 15—17.

Cross References.—Ex officio Judges of C. A., J. A. 1875, s. 4; J. A. 1891, s. 1. *post*. Ordinary Judges of C. A., J. A. 1875, s. 4; J. A. 1881, s. 3. As to making M. R. a judge of appeal only, and the President of the P. D. & A. Div. an ex officio member, see J. A. 1881, ss. 2, 3, 4. As to constitution of Court of Appeal, &c., see J. A. 1875, s. 4, and (n.) "Court of Appeal," p. 458. Style of judges J. A. 1877, s. 4; J. A. 1881, s. 8. *post*. As to judge of C. A. sitting as judge of H. C., J. A. 1873, s. 51.

Orders relating to business in Her Majesty's Court of Appeal.

16. Orders for constituting and holding divisional courts of the Court of Appeal, and for regulating the sittings of the Court of Appeal, and of the divisional courts of appeal, may be made, and when made, in like manner rescinded or altered, by the President of the Court of Appeal, with the concurrence of the ordinary judges of the Court of Appeal, or any three of them.

The latter part of this section (now repealed) repealed so much of J. A. 1875, s. 17, as related to the regulation of subjects regulated by this section, and so much of Rules of Court as might be inconsistent with orders made hereunder.

Regulations as to business of High Court of Justice and divisional courts of High Court.

17. Every action and proceeding in the High Court of Justice, and all business arising out of the same, except as is hereinafter provided, shall, so far as is practicable and convenient, be heard, determined, and disposed of before a single judge, and all proceedings in an action subsequent to the hearing or trial, and down to and including the final judgment or order, except as aforesaid, and always excepting any proceedings on appeal in the Court of Appeal, shall, so far as is practicable and convenient, be had and taken before the judge before whom the trial or hearing of the cause took place: Provided nevertheless, that divisional courts of the High Court of Justice may be held for the transaction of any business which may for the time being be ordered by rules of court to be heard by a divisional court; and any such divisional court when held shall be constituted of two judges of the court and no more, unless the President of the division to which such divisional court belongs, with the concurrence of the other judges of such division, or a majority thereof, is of opinion that such divisional court should be constituted of a greater number of judges than two, in which case such court may be constituted of such number of judges as the President, with such concurrence as aforesaid, may think expedient; nevertheless the decisions of a divisional court shall not be invalidated by reason of such court being constituted of a greater number than two judges; and

Rules of court for carrying into effect the enactments contained in this section shall be made and may be afterwards altered, and all rules of court, whether made under "The Supreme Court of Judicature Act, 1875," or this Act, shall be laid before each House of Parliament within such time and subject to be annulled in such manner as is provided by "The Supreme Court of Judicature Act, 1875."

The last paragraph of this section (which was repealed by S. L. Rev. Act, 1883) repealed so much of sections 40, 41, 42, 43, 44, 46 of J. A. 1875, as were inconsistent with this section.

This section is extended by Jud. (Off.) Act, 1879, s. 22, and amended by J. A. 1881, s. 19, and J. A. 1884, s. 4, *post*.

Cross References.—*Divisional Courts.*—As to matters to be heard by Divisional Court, J. A. 1873, ss. 40, 42, and as to appeals, s. 45. As to motion for new trial, or to set aside verdict, J. A. 1890, s. 1. As to granting issues and reserving cases by Div. Ct., J. A. 1873, s. 46; J. A. 1875, s. 22.

"**Single Judge.**"—Compare J. A. 1873, s. 40. See O. 59, r. 2.

"**With the Concurrence.**"—See J. A. 1884, s. 4.

"**Rules of Court.**"—As to orders and rules relating to Div. Cts., O. 39, r. 1; O. 59. As to making of R. S. C. generally, see (n.) "Rule Committee," J. A. 1881, s. 19.

"**Laid before each House,**" &c.—See (n.) "Laying Rules before Parliament," J. A. 1881, s. 19 (n.), p. 496.

18. [Power in certain events to fill vacancies occasioned in High Court of Justice by removal of judges to Court of Appeal. An additional judge of the C. D. was appointed under this section in 1899.]

Attendance of Judges of High Court of Justice on Court of Appeal.

19. Where a judge of the High Court of Justice has been requested to attend as an additional judge at the sittings of the Court of Appeal under section four of "The Supreme Court of Judicature Act, 1875," such judge shall, although the period has expired during which his attendance was requested, attend the sittings of the Court of Appeal for the purpose of giving judgment or otherwise in relation to any case which may have been heard by the Court of Appeal during his attendance on the Court of Appeal.

See J. A. 1875, s. 4, p. 457.

Amendment of Judicature Acts as to appeals from High Court of Justice in certain cases.

20. Where by Act of Parliament it is provided that the decision of any court or judge the jurisdiction of which court or judge is transferred to the High Court of Justice is to be final, an appeal shall not lie in any such case from the decision of the High Court of Justice, or of any judge thereof, to Her Majesty's Court of Appeal.

See J. A. 1873, s. 49.

Cross References.—As to appeals from inferior Courts to Div. Cts., J. A. 1873, s. 45.

"**Where, &c., is to be final.**"—See J. A. 1894, s. 1 (b), (n.) "Without the leave," p. 517. See also J. A. 1873, s. 45, (n.) "Unless Special," &c., p. 433; *ibid.*, s. 49, (n.) "Except by leave," p. 438.

Notwithstanding it is provided by a statute that an appeal is to be final, yet if the case be within J. A. 1873, s. 45, an appeal will lie, *if leave be given under that section.* (*Crush* v. *Turner*, 3 Ex. D. 303; *Thomas* v. *Kelly*, 13 App. Cas. 506; *Harvey* v. *Copeland*, 32 L. R. Ir., p. 422; and so in cases under J. A. 1881, s. 14.) But if the case does not come within J. A. 1873, s. 45, p. 431, or J. A. 1881, s. 14, p. 494, no appeal lies, although leave has been given. (*Hall* v. *L. B. & S. C. Ry. Co.*, 15 Q. B. D., p. 547; 17 Q. B. D. 230; and see *Morgan* v. *Rees*, 6 Q. B. D., p. 510.

Interpleader.—Appeals in interpleader are final, under C. L. P. Act, 1860 (see O. 57, r. 11 (n.)). So also when the proceedings are remitted under J. A. 1884, s. 17, unless leave be given under J. A. 1873, s. 45. (*Thomas* v. *Kelly*, 13 App. Cas. 506.)

Registration and Election Cases.—See J. A. 1881, s. 14, p. 494.

Divorce Costs.—See (n.) "Divorce Costs" under (n.) "Appeal as to Costs," O. 65, r. 1.

App. Jur. Act, 1876, ss. 21—25.

21. [Continuation until 1 Jan. 1878, of 38 & 39 Vict. c. 77, as to vacancies in legal offices.]

See J. A. 1877, s. 6. Rep. S. L. Rev. Act, 1883.

Appointment of deputy by district registrars.

22. A district registrar of the Supreme Court of Judicature may from time to time, but in each case with the approval of the Lord Chancellor and subject to such regulations as the Lord Chancellor may from time to time make, appoint a deputy, and all acts authorized or required to be done by, to, or before a district registrar may be done by, to, or before any deputy so appointed: Provided always, that in no case such appointment shall be made for a period exceeding three months.

As altered by S. L. R. Act, 1894.

Establishment of district registries, J. A. 1873, s. 60; reference to, of inquiries, &c., *ibid.*, s. 66; joint district registrars, J. A. 1875, s. 13; appointment of, J. A. 1881, s. 22; J. A. 1884, s. 12; list of registries, p. 443, *ante*.

District Registries generally.—See O. 35.

23. [Relates to the appointment of vice-admiral, judge, and officers of the Vice-Admiralty Court, and is revised by S. L. R. Act, 1894.]

Repeal and Definitions.

Repeal of certain sections of the Supreme Court of Judicature Acts, &c.

24. Section sixteen of the Act for better enforcing Church discipline, passed in the session of the third and fourth years of the reign of Her present Majesty, chapter eighty-six, and sections twenty, twenty-one, and fifty-five of the Supreme Court of Judicature Act, 1873, and section two of the Supreme Court of Judicature Act, 1875, shall be repealed (with the exception of so much of section two as declares the day on which that Act is to commence).

Definitions:

25. In this Act, if not inconsistent with the context, the following expressions have the meaning hereinafter respectively assigned to them; that is to say,

"high judicial office:"

"High judicial office" means any of the following offices; that is to say,

The office of Lord Chancellor of Great Britain or Ireland, or of paid judge of the Judicial Committee of the Privy Council, or of judge of one of Her Majesty's superior courts of Great Britain and Ireland:

App. Jur. Act, 1887, s. 5.—"The expression 'high judicial office' as defined in the twenty-fifth section of the Appellate Jurisdiction Act, 1876, shall be deemed to include the office of a Lord of Appeal in Ordinary and the office of a member of the Judicial Committee of the Privy Council."

"superior courts."

"Superior courts of Great Britain and Ireland" means and includes,—

As to England, Her Majesty's High Court of Justice and Her Majesty's Court of Appeal, and the superior courts of law and equity in England as they existed before the constitution of Her Majesty's High Court of Justice; and

As to Ireland, the superior courts of law and equity at Dublin; and

As to Scotland, the Court of Session.

The definition of "error" is repealed by the S. L. R. Act, 1894.

See ss. 3, 11, *supra*; J. A. 1873, s. 47 (n.) "Save for some error," &c

THE

SUPREME COURT OF JUDICATURE ACT, 1877.

(40 VICT. c. 9.)

An Act for Amending the Supreme Court of Judicature Acts, 1873 and 1875. [24th April, 1877.]

Be it enacted, &c.

Construction and short title of Act.

1. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Supreme Court of Judicature Acts, 1873 and 1875, and this Act may be cited separately as "The Supreme Court of Judicature Act, 1877."

As altered by S. L. R. Act, 1894.

Appointment of additional judge of High Court of Justice.

2. It shall be lawful for Her Majesty to appoint a judge of the High Court of Justice in addition to the number of judges of that court authorized to be appointed by the Supreme Court of Judicature Acts, 1873 and 1875.

See J. A. 1873, s. 5; J. A. 1875, s. 18; J. A. 1881, s. 6.

Position of additional judge.

3. The judge appointed in pursuance of this Act shall be in the same position as if he had been appointed a puisne judge of the said High Court in pursuance of the Supreme Court of Judicature Acts, 1873 and 1875; and all the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, for the time being in force in relation to the qualification and appointment of puisne judges of the said High Court, and to their tenure of office, and to their precedence, and to their salaries and pensions, and to the officers to be attached to the persons of such judges, and all other provisions relating to such puisne judges, or any of them, with the exception of such provisions as apply to existing judges only, shall apply to the additional judge appointed in pursuance of this section in the same manner as they apply to the other puisne judges of the said Court respectively. The judge appointed in pursuance of this Act shall be attached to the Chancery Division of the said High Court, subject to such power of transfer as is in the Supreme Court of Judicature Act, 1873, mentioned.

Style of judges.

4. The ordinary judges of the Court of Appeal shall be styled Lords Justices of Appeal, and the judges of the High Court of Justice (other than the presidents of divisions) shall be styled justices of the High Court.

As altered by the S. L. R. Act, 1894.

Jud. Act, 1877, ss. 4—6.

"Style."—Amended as to style of Presidents, J. A. 1881. ss. 4 and 8, *post*; and see J. A. 1884, s. 3.
Mode of addressing Judges of High Court, J. A. 1873, s. 5, *ante*.

Definition of puisne judge.

5. A puisne judge of the High Court of Justice means for the purposes of this Act a judge of the High Court of Justice other than the Lord Chancellor, the Lord Chief Justice of England, and their successors respectively.

Rep. in part, S. L. Rev. Act, 1883. See J. A. 1873, s. 32.

6. [Rep. S. L. Rev. Act, 1883.]

THE

JUDICATURE (OFFICERS) ACT, 1879.

(42 & 43 VICT. c. 78.)

An Act to amend the Supreme Court of Judicature Acts.
[15th August, 1879.]

Jud. (Off.) Act, 1879, ss. 1—4.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

Preliminary.

Construction and short title of Act.

1. This Act shall be construed as one with the Supreme Court of Judicature Acts, 1873, 1875, and 1877, and may be cited together with those Acts as the Supreme Court of Judicature Acts, 1873 to 1879, and separately as the Supreme Court of Judicature (Officers) Act, 1879.

2. [Repealed by the S. L. R. Act, 1894.]

Definition of "existing."

3. In this Act "existing" means existing at the commencement of this Act.

Central Office.

Establishment of central office.

4. There shall be established a central office of the Supreme Court.

Central Office.—See O. 61.
Officers and Offices.—J. A. 1873, s. 77.

5. There shall be concentrated in and amalgamated with the central office the following offices ; namely,

Certain offices amalgamated with central office.

The record and writ clerks office;

The enrolment office;

The report office;

The offices of the masters of the Queen's Bench, Common Pleas, and Exchequer Divisions, including the bills of sale office;

The offices of the associates in the Queen's Bench, Common Pleas, and Exchequer Divisions;

The Crown office of the Queen's Bench Division;

The Queen's remembrancer's office;

The office of the registrar of certificates of acknowledgments of deeds by married women;

The office of the registrar of judgments; and

By O. 61, r. 1A (R. S. C. Dec. 1887) these three last-mentioned offices are amalgamated.

Such other offices of the Supreme Court as may from time to time be amalgamated with the central office by rules of court.

6. There shall be transferred to the central office,—

Transfers of certain officers to central office.

(*a.*) [Repealed by S. L. R. Act, 1894.]

(*b.*) Such of the existing officers employed under the registrar of the Probate, Divorce, and Admiralty Division as the judges of that division respectively select as necessary for the performance of the duties to be performed in the central office ; and

(*c.*) Such other officers of and persons employed in the Supreme Court or the offices thereof as are from time to time transferred to the central office by rules of court.

Officers, O. 60. Central Office, O. 61. Chancery Registrars, O. 62.

7. The central office shall be under the control and superintendence of officers called masters of the Supreme Court of Judicature.

Central office to be under control of masters of Supreme Court.

As altered by S. L. R. Act, 1894.

"**Masters.**"—See s. 14, s.s. 3, *infra*.

8. [S.s. 1 is repealed by the S. L. R. Act, 1894.]

(2.) The salaries of the first masters of the Supreme Court shall be :

First masters of Supreme Court.

(*a.*) In the case of each existing master of the Queen's Bench, Common Pleas, or Exchequer Division, the salary to which he is entitled as such master at the commencement of this Act :

(*b.*) In the case of the existing master of the crown office, the yearly sum of fifteen hundred pounds :

As altered by S. L. R. Act, 1894.

Jud. (Off.) Act, 1879, ss. 8—12.

(c.) In the case of every other master of the Supreme Court, the salary to which he would have been entitled if he had been appointed a master of the Queen's Bench, Common Pleas, or Exchequer Division immediately before the commencement of this Act.

See s. 14, s.s. 3, *infra*. and J. A. 1881, s. 20.

[S.s. 3 is repealed by the S. L. R. Act, 1894.]

Appointment and removal of officers of central office.

9. (1.) The right of filling any vacancy in the office of master of the Supreme Court or in any clerkship in the central office, shall, subject as in the next sub-section mentioned, be vested in the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, in rotation and in such order as they by agreement among themselves determine.

(2.) The right of filling any vacancy in the office of Queen's coroner and attorney and of master in the crown office shall be vested in the Lord Chief Justice of England, and the persons appointed to these offices respectively shall be by virtue of their appointment masters of the Supreme Court.

(3.) Subject as aforesaid, the right of filling any vacancy in, and of making any new appointment in or for the purposes of, the central office shall be vested in the Lord Chancellor with the concurrence of the Treasury.

(4.) Any officer of the central office may be removed by a majority of the judges mentioned in this section, with the approval of the Lord Chancellor, for reasons to be assigned in the order of removal.

See J. A. 1873, s. 32 (n.); J. A. 1881, s. 21; J. A. 1884, s. 19.

Qualification of masters of Supreme Court.

10. A person shall not be qualified to be appointed a master of the Supreme Court unless he is or has been a practising barrister or solicitor of five years' standing, or has practised for five years as a special pleader or as a special pleader and barrister; but nothing in this section shall affect the qualification of an existing officer of the Supreme Court to be appointed to any office dealt with by this Act.

Tenure of masters of Supreme Court.

11. Every master of the Supreme Court shall hold office during good behaviour.

This and the preceding section are substantially identical with 7 Will. 4 & 1 Vict. c. 30, ss. 10, 13.

Business of central office.

12. (1.) The business to be performed in the central office shall, subject to rules of court, comprise all the business performed in the offices by or in pursuance of this Act amalgamated with the central office, and shall be distributed among the several officers of the central office in such manner as may be directed by rules of court.

(2.) The several officers of the central office shall be interchangeable one with another and shall be capable of performing and liable to perform the duties of each other in any department of the office,

and generally shall perform such duties and have such powers in relation to the business of the Supreme Court as may be directed by rules of court, subject to this qualification, that the duties required to be performed by any officer transferred to the central office by or in pursuance of this Act shall, except as far as they are modified with his consent, be the same as or analogous to those which he performed before being so transferred.

(3.) Subject as aforesaid, all officers of the central office shall continue to perform the duties heretofore performed by them in their respective offices, and to have and exercise the powers heretofore vested in them, in the same manner, as nearly as may be, as if this Act had not passed.

Central Office, O. 61. Officers, O. 60. J. A. 1873, s. 77.

Classification of clerks of central office.

13. The clerks employed in the central office shall be classified as principal clerks, first-class clerks, second-class clerks, and copying clerks, or in such other manner as the Lord Chancellor, with the concurrence of the Treasury, from time to time directs.

Abolition of certain offices and continuance of others.

14. [S.s. 1 and 2 are repealed by S. L. R. Act, [1894.]

(3.) On and after the occurrence of the next vacancy in any of the offices specified in the third part of the First Schedule to this Act, the senior master for the time being of the Supreme Court shall hold and perform the duties of the office, with such additional salary in respect of the office of Queen's remembrancer as the Lord Chancellor, with the concurrence of the Treasury, may determine.

(4.) Provided as follows:

(*a.*) For the purposes of this section the existing masters of the Queen's Bench, Common Pleas, and Exchequer Divisions shall collectively rank as senior to the other first masters of the Supreme Court;

(*b.*) Subject as aforesaid, each of the first masters of the Supreme Court shall, for the purposes of this section, rank in seniority according to the date of his first appointment to an office in the Supreme Court, or in any court of which the jurisdiction has been transferred to the Supreme Court.

O. 60 and O. 61.

Salaries and Pensions.

[Sections 15 to 21 deal with the Salaries and Pensions of the officers of the Supreme Court. S. 20 is extended by J. A. 1884, s. 20.]

Rules of Court.

Making rules of court. 38 & 39 Vict. c. 77. 39 & 40 Vict. c. 59.

22. (1.) Section seventeen of the Supreme Court of Judicature Act, 1875, as amended by section seventeen of the Appellate Jurisdiction Act, 1876, shall extend to authorize the making, in pursuance of those sections, of rules of court under or for the purposes of this Act, and under or for the purposes of any Act passed after the passing of this Act which expressly or by implication authorizes or directs the making of rules of court, and also under or for the purposes of any Act passed before the passing of this Act,

Jud. (Off.) Act, 1879. ss. 22—29.

which, so far as unrepealed, expressly or by implication authorizes or directs the making of any orders, rules, or regulations for any purpose for which rules of court can be made under the above-mentioned sections, or for any similar purpose: provided that where the concurrence of the Treasury is required in making rules of court, or any such orders, rules, or regulations, rules of court under this section shall not be made without that concurrence.

(2.) Such rules of court as are requisite for bringing this Act into operation shall be made as soon as may be after the passing of this Act, but no rules of court made under this Act shall come into operation before the commencement of this Act.

"**Rules of Court.**"—See J. A. 1881, s. 19, and (n.) p. 496. Rules Publication Act, 1893, p. 525.

Rule Committee.—See this note J. A. 1881, s. 19, p. 496.

Supplemental.

[Sections 23 to 27 relate to the rights and status of officers, &c.]

Name of new law courts.

28. The buildings erected under the Courts of Justice Building Act, 1865, and the Courts of Justice Concentration (Site) Act, 1865, together with all additions thereto, shall be styled the Royal Courts of Justice.

See (n.) "At any place," J. A. 1873, s. 26, p. 422.

29. [Repeals, with a saving, the enactments relating to officers and offices of the Supreme Court. It is amended by the S. L. R. Act, 1894.]

SCHEDULES.

[Repealed, except second part of First Schedule, by S. L. R. Act, 1894.]

THE

SUPREME COURT OF JUDICATURE ACT, 1881.

(44 & 45 VICT. c. 68.)

An Act to amend the Supreme Court of Judicature Acts; and for other purposes. [27th August, 1881.]

Jud. Act, 1881, ss. 1—4.

1. This Act may be cited as the Supreme Court of Judicature Act, 1881.

Short title.

2. Every Master of the Rolls shall by virtue of his office be a judge of Her Majesty's Court of Appeal, and shall retain the same rank, title, salary, right of pension, patronage, and powers of appointment or dismissal, and all other powers, privileges, and disqualifications now and heretofore belonging to the said office of Master of the Rolls and all other duties of the said office except that of a judge of Her Majesty's High Court: Provided that any Master of the Rolls to be hereafter appointed shall be under an obligation to go circuits and to act as a commissioner under commissions of assize, or other commissions authorized to be issued in pursuance of the Supreme Court of Judicature Act, 1873, in the same manner in all respects as he would have been under the last-mentioned Act, or any Acts or Act amending the same, if he had continued to be a judge of the Chancery Division of the High Court of Justice.

Master of the Rolls to be Judge of Appeal only.

Master of the Rolls.—See Judicature Act, 1873, ss. 5, 16, s.s. 1. As to jurisdiction in relation to records, *Ibid.* s. 17, sub-s. 6 (n.). To be ex-officio judge of C. A., J. A. 1875, s. 4. As to Rolls Court and Chambers, s. 7, *infra*. Powers of as to Solicitors, s. 24, *infra*. As to petitions, the orders on which were formerly drawn up in office of secretaries of M. R., see O. 62, r. 18.

3. The number of ordinary judges of that court shall henceforth be five.

Existing vacancy in Court of Appeal not to be filled up.

As altered by S. L. R. Act, 1894.
See J. A. 1875, s. 4. App. Jur. Act, 1876, s. 15.
"**Of that Court.**"—*I.e.*, of the C. A.

4. The President for the time being of the Probate, Divorce, and Admiralty Division of the High Court shall henceforth be an ex-officio judge of Her Majesty's Court of Appeal with the same powers, and in the same manner in all respects as the other ex-officio judges thereof; he shall not be entitled in the said court

President of Probate Division to be an ex-officio judge of Court of Appeal.

Jud. Act, 1881, ss. 4—9.

to any precedence over any existing judge to which he would not have been entitled as a judge of the Supreme Court if this Act had not passed.

As to Judges of C. A., see J. A. 1875, s. 4; App. Jur. Act, 1876, s. 15. As to precedence, J. A. 1884, s. 3; J. A. 1891, s. 2. As to style of Judges, cf. C. A. and High Court, J. A. 1877, s. 4.

New judge of High Court instead of Master of the Rolls.

5. It shall be lawful for Her Majesty to supply the vacancy in the High Court, to be occasioned by the removal therefrom of the Master of the Rolls, by the appointment from time to time of a judge, who shall be in the same position as if he had been appointed a puisne judge of the said High Court in pursuance of the Judicature Acts, 1873 and 1875; and all the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, for the time being in force in relation to the qualification and appointment of puisne judges of the said High Court, and to their duties and tenure of office, and to their precedence, and to their salaries and pensions, and to the officers to be attached to the persons of such judges, and all other provisions relating to such puisne judges, or any of them, with the exception of such provisions as apply to existing judges only, shall apply to the judge appointed in pursuance of this section, in the same manner as they apply to the other puisne judges of the said High Court respectively. The judge so appointed shall be attached to the Chancery Division of the said High Court subject to such power of transfer as is in the Supreme Court of Judicature Act, 1873, mentioned.

As altered by S. L. R. Act, 1894.
Chitty, L.J., was appointed a puisne Judge under this section.
As to power of transfer, by royal sign manual, see J. A. 1873, s. 31.

Judge under 40 & 41 Vict. c. 9.

6. The power given to Her Majesty by the Supreme Court of Judicature Act, 1877, to appoint a judge of the High Court in addition to the number of judges authorized to be appointed by the Supreme Court of Judicature Acts, 1873 and 1875, may be exercised by Her Majesty from time to time, so as at all times to make due provision for the business of the Chancery Division of the High Court of Justice: Provided that no such appointment shall be made unless or until the number of judges attached for the time being to the Chancery Division of the High Court, other than the Lord Chancellor, is, by death, resignation, or otherwise, reduced below five.

J. A. 1877, s. 2, repealed by S. L. Rev. Act, 1894.

7. [This section deals with the Rolls Court Chambers and clerks, &c.]

Title of Presidents.

8. The exception of presidents of divisions from the enactment that the judges of the High Court shall be styled justices of the High Court shall not apply to any judge to be hereafter appointed who may be or become President of the Probate, Divorce, and Admiralty Division of the High Court.

As altered by S. L. R. Act, 1894.
"**The Exception.**"—See J. A. 1877, s. 4; J. A. 1884, s. 3, *post*.

Appeals under Divorce Act.

9. All appeals which, under section fifty-five of the Act of the twentieth and twenty-first years of her present Majesty, chapter

eighty-five, or under any other Act, might be brought to the full court established by the said first-mentioned Act, shall henceforth be brought to Her Majesty's Court of Appeal and not to the said full court.

The decision of the Court of Appeal on any question arising under the Acts relating to divorce and matrimonial causes, or to the declaration of legitimacy, shall be final, except where the decision either is upon the grant or refusal of a decree on a petition for dissolution or nullity of marriage, or for a declaration of legitimacy, or is upon a question of law on which the Court of Appeal give leave to appeal; and, save as aforesaid, no appeal shall lie to the House of Lords under the said Acts.

Subject to any order made by the House of Lords, in accordance with the Appellate Jurisdiction Act, 1876, every appeal to the House of Lords against any such decision shall be brought within one month after the decision appealed against is pronounced by the Court of Appeal if the House of Lords is then sitting, or, if not, within fourteen days after the House of Lords next sits.

This section, so far as is consistent with the tenor thereof, shall be construed as one with the said Acts.

"**All Appeals.**" &c.—Before the Judicature Act the appeal was to the "Full Court," under the Divorce Acts, 1857, 1858, 1860. This was not one of the jurisdictions transferred to C. A. by J. A. 1873, s. 18, and this section was passed to confer this right. (*Westhead* v. *W.*, 2 P. D. 1: *Gladstone* v. *G.*, *ibid.* 145.) As to divorce costs, see (n.) "Divorce Costs" under (n.) "Appeal as to Costs," O. 65, r. 1, Vol. I., p. 913.

An appeal from a matrimonial cause (where an appeal lies) to the H. of L. is from the C. A. only. (*Clearer* v. *C.*, 5 App. Cas. 631.)

"**Full Court.**"—*Time for Appeal.*—*New Trial.*—Appeal to C. A. from P. D. must be within 14 days, and there is no power to enlarge the time. (*Thier* v. *A.*, 10 P. D. 110: *Saunders* v. *S.*, 20 L. J. N.C. 63.)

"**Leave to Appeal.**"—Given in *Bishop* v. *B.*, 102 L. T. Jo. 577: refused in *Love* v. *L.*, (1899) P. p. 210.

10. No appeal from an order absolute for dissolution or nullity of marriage shall henceforth lie in favour of any party who, having had time and opportunity to appeal from the decree *nisi* on which such order may be founded, shall not have appealed therefrom.

As to appeals against decrees *nisi* for dissolution.

Cf. *Clearer* v. *C.*, cited in last note.

11. A judge who was not present and acting as a member of a divisional court of the High Court, at the time when any decision which may be appealed from was made, or at the argument of the case decided, shall not, for the purposes of the fourth section of the Supreme Court of Judicature Act, 1875, be deemed to be, or to have been, a member of such divisional court.

Qualification of judges to sit on appeals.

See *Fisher* v. *Val Travers, &c., Co.*, 1 C. P. D. 259, cited J. A. 1875, s. 4.

12. In any case of urgency arising during the absence from illness or any other cause or during any vacancy in the office of any judge of the High Court to whom any cause or matter may have been according to the course of the said court or of any division thereof specially assigned, it shall be lawful for any other judge of the said court, who may consent so to do, to hear and dispose of

In cases of urgency, &c., one judge may officiate for another.

Jud. Act, 1881, ss. 12—14.

any application for an injunction or other interlocutory order for or on behalf of the judge so absent, or in the place of the judge whose office may have so become vacant.

See as to Judge of C. A. sitting as judge of H. C., J. A. 1873. s. 51 (n.), p. 441 ; J. A. 1884. ss. 5, 6. As to C. D., cf. O. 49, r. 4A ; *Scriff* v. *Luff*, 28 Sol. Jo. 432 ; *Re Lane*, 30 Sol. Jo. 304.

Selection of judges for trial of election petitions.
31 & 32 Vict. c. 125.

13. The judges to be placed on the rota for the trial of election petitions in England in each year, under the provisions of the Parliamentary Elections Act, 1868, or any Act amending the same, shall henceforth be selected out of the judges of the Queen's Bench Division of the High Court in such manner as may be provided by any Rules of Court to be made for that purpose ; and, subject thereto, shall be selected as follows ; (that is to say,) the judges of the Queen's Bench Division of the said High Court shall, on or before the fourth day of November in every year, select, by a majority of votes, three of the puisne judges of such division (none of whom shall be a member of the House of Lords) to be placed on the rota for the trial of election petitions during the ensuing year.

If in any case the judges of the said division, present at the time of their meeting to make such selection, are equally divided in their choice of any judge to be placed on the rota, the Lord Chief Justice of England, or, in case of his absence, the senior judge then present, shall have a second or casting vote.

The choice of a judge to fill any occasional vacancy upon the rotas or to assist the judge on the rota as an additional judge, shall be made in like manner.

If at the end of the year for which any such judge shall have been appointed, any trial or other matter shall be pending before him, either alone or together with any other judge, and not concluded, or, if after the conclusion of any such trial or of the hearing of any such matter, judgment shall not have been given thereon, it shall be lawful for every such judge to proceed with and to conclude such pending trial or other matter, and to give judgment thereon, after the end of such year, in the same manner in all respects as if the year for which he was appointed had not expired.

This section replaces J. A. 1873, s. 38.
Trial to be before two judges, 42 & 43 Vict. c. 75, s. 2.

Jurisdiction of High Court in registration and election cases.
28 & 29 Vict. c. 36.
31 & 32 Vict. c. 125.
35 & 36 Vict. c. 60.
41 & 42 Vict. c. 26.

14. The jurisdiction of the High Court to decide questions of law, upon appeal or otherwise, under the Act of the sixth and seventh years of Her Majesty, chapter eighteen, the County Voters Registration Act, 1865, the Parliamentary Elections Act, 1868, the Corrupt Practices (Municipal Elections) Act, 1872, the Parliamentary and Municipal Registration Act, 1878, or any of the said Acts, or any Act amending the same respectively, shall henceforth be final and conclusive, unless in any case it shall seem fit to the said High Court to give special leave to appeal therefrom to Her Majesty's Court of Appeal, whose decision in such case shall be final and conclusive.

"**Question of Law.**" — *Amendment.* — Application "ex parte" at Chambers to amend a petition under this Act. The judge, who was not on the rota for the trial of election petitions,

gave leave. The Div. Ct. reversed the order. The petitioner appealed to the C. A., but without leave. Held this was a "question of law" and that without leave no appeal lay. (*Shaw* v. *Reckitt*, (1893) 2 Q. B. 59.)

"**Be Final and Conclusive.**"—See App. Jur. Act, 1876, s. 20 (n.), p. 483, *ante*. This section creates an absolute finality of decision, where leave is not granted. (*Unwin* v. *McMullen*, (1891) 1 Q. B. 694.)

Election Petition—Interlocutory Application.—When the matter appealed from is entirely preliminary to an election petition, see *Harmon* v. *Park*, 6 Q. B. D. 323, followed in *Monkswell* v. *Thompson*, *infra*.

Municipal Corporation Act, 1882.—This Act enacts that the decision of the H. C. shall be final, but in effect (by s. 242) this section is incorporated therein, and so if leave be given hereunder an appeal lies. (*Line* v. *Warren*, *&c.*, 14 Q. B. D. 548, but if leave be not given, *secus*, *Unwin* v. *McMullen*, *supra*.)

An appeal lies to C. A. from order of judge in Chambers, in an interlocutory application in a School Board Election Petition under this Act. (*Monkswell* v. *Thompson*, (1898) 1 Q. B. 353.)

Municipal Elections, *&c.*, *Act*, 1884, *s.* 20.—An appeal lies to C. A. from refusal of Q. B. D. to make an order hereunder. (*Exp. Walker*, 22 Q. B. D. 384.)

Report of Commissioner.—Where a Commissioner has been appointed to try a municipal election petition, and has reported thereon, his decision upon any facts entrusted to his decision cannot be reviewed by a Div. Ct. (*Preece* v. *Harding*, 24 Q. B. D. 110.)

Mandamus to Commissioner to Hear and Determine.—See *Re Wigan Municipal Election Petition*, 38 Sol. Jo. 386.

Election to County Ch. under Local Government Act, 1888.—An appeal lies by special leave. (*Beresford-Hope* v. *Lady Sandhurst*, 23 Q. B. D. 79.)

Reviewing.—Semble, the Court may review its previous decisions when they appear to be clearly erroneous. (*Webster, app., Ashton-under-Lyne (Overseers), resp., Hadfield's Case*, L. R. 8 C. P. 306.)

Quorum in Court of Criminal Appeal.

15. The jurisdiction and authority in relation to questions of law arising in criminal trials, which, under section forty-seven of the Supreme Court of Judicature Act, 1873, is now vested in the judges of the High Court of Justice, may be exercised by any five or more of such judges; provided that the Lord Chief Justice of England shall always be one of such judges, unless, by writing under his hand or by the certificate in writing of his medical attendant, it shall appear that he is prevented, by illness or otherwise, from being present at any court duly appointed to be held for the purpose aforesaid, in which case the presence of the said Lord Chief Justice at such court shall not be necessary.

As altered by S. L. R. Act, 1894.
See note to J. A. 1873, s. 47.

16. [This section is repealed by the Sheriffs Act, 1887. See third schedule.]

17. [The presentation and swearing of the Lord Mayor of the City of London, henceforth to take place in the Queen's Bench Division of her Majesty's High Court.]

As to fixing sessions of Central Criminal Court.

18. The power of making general orders for fixing the times of holding sessions of the Central Criminal Court established by the Act of the fourth and fifth years of King William the Fourth, chapter thirty-six, which by section fifteen of that Act was given to

Jud. Act, 1881, ss. 18, 19.

any eight or more of the judges of the Superior Courts of Westminster, may henceforth be exercised from time to time by any four or more of the judges of Her Majesty's High Court.

J. A. 1873, ss. 30, 37.

Power to make rules under 39 & 40 Vict. c. 59.

19. The power of making rules of court, conferred by section seventeen of the Appellate Jurisdiction Act, 1876, upon the several judges therein mentioned, shall henceforth be vested in and exercised by any five or more of the following persons, of whom the Lord Chancellor shall be one; namely, the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the President of the Probate, Divorce, and Admiralty Division of the High Court, and four other judges of the Supreme Court to be from time to time appointed for the purpose by the Lord Chancellor in writing under his hand, such appointment to continue for such time as shall be specified therein.

"**Rules of Court.**"—The Rules of the Supreme Court, 1883, were made hereunder. The following sections refer to Rules of Court. J. A. 1875, ss. 17, 20, 24; App. Jur. Act, 1876, s. 17: J. (Officers) A. 1879, s. 22; J. A. 1884, ss. 23, 24; J. A. 1890, s. 3: J. A. 1894, s. 3. See also S. L. Rev. Act, 1883, s. 6 (*c*). (*Ex p. Mayor of London*, 25 C. D. 384.)

Definition of Rules of Court.—See Interpretation Act, 1889, s. 14, and cf. Rules Publication Act, s. 5, p. 525.

Rule Committee.—See J. A. 1875, s. 17; App. Jur. Act, 1876, s. 17; J. (Officers) Act, 1879, s. 22; J. A. 1894, s. 4.

Constitution.—This section alters the constitution of the Rule Committee as settled by J. A. 1875, s. 17. Four judges were appointed pursuant to this section by the L. C. on the 12th Jan. 1883, by whom, together with the officers named in this section, the R. S. C. of 1883 were made. By J. A. 1894, s. 4, *infra*, p. 521, the President of the Incorporated Law Society, a practising barrister, and another are included.

Powers.—Power to annul and alter existing rules, and to make fresh rules for the regulation of pleading, practice, procedure, and costs (J. A. 1875, ss. 16, 17; Jud. (Off.) Act, 1879, s. 22, *ante*), but not of the rules of evidence (but see J. A. 1894, s. 3, p. 521) nor of the law of juries, that is, the law relating to the choice, summoning and qualification of jurymen (J. A. 1875, s. 20); but practice or procedure already regulated by statute (see J. A. 1875, s. 24) is not excluded from alteration under these powers. Power to make rules, as to appeals from inferior Courts, and for inferior Courts, J. A. 1884, ss. 23, 24. Power to make rules as to evidence of particular facts, J. A. 1894, s. 3. Power to make rules for the purpose of any Act passed after Jan. 1890, which directs or authorises anything to be done by Rules of Court, Interpretation Act, 1889, s. 14; and see J. (Off.) A. 1879, s. 22. Power to make rules with respect to matters contained in enactments in schedule to J. A., 1894, see J. A. 1894, s. 5, p. 522. See the "Rules Publication Act," p. 525.

"**Upon the several Judges therein mentioned.**"—At the date of this Act, 1881, s. 17 of the App. Jur. Act, 1876, contained the names of certain judges, but by the amendments made by the Statute Law Rev. Act, 1883, these were struck out.

Laying Rules before Parliament.—By J. A. 1875, ss. 17 and 25, and App. Jur. Act, 1876, s. 17, the rules made *in pursuance of those sections* are to be laid before Parliament, but not before they come into operation, see Rules Publication Act, 1893, s. 1, s.s. 4, p. 525.

Publication of Statutory Rules.—At least 40 days before making any Statutory Rules, notice of the proposal to make the rules, &c., is to be published in the *Gazette*, and any representations or suggestions made in writing by any public body interested are to be taken into consideration by the rule making authority, and on the expiration of the 40 days the rules may be made. Rules Publication Act, 1893, p. 525.

Jud. Act, 1881, ss. 19—22.

20. [This is an extension of 32 & 33 Vict. c. 91, s. 14, with two provisoes.]

See Courts of Justice (Salaries and Funds) Act, 1869 (32 & 33 Vict. c. 91), s. 14. See also J. A. 1873, s. 84. J. (Officers) A. 1879, ss. 8, 15.

Notice of vacancies in offices of Supreme Court.

21. Upon the occurrence henceforth of any vacancy in any office of the Supreme Court notice thereof shall be forthwith given to the Lord Chancellor and also to the Treasury by the senior continuing or surviving officer of the department in which the vacancy shall occur, and no appointment shall be made to fill such vacancy within the period of one month next after the date of such notice without the assent of the Lord Chancellor, given with the concurrence of the Treasury; and the Lord Chancellor may, if it be necessary, make provision in such manner as he thinks fit for the temporary discharge in the meantime of the duties of such office. The word "officer" in this Act shall not include the office of any judge of the Supreme Court of Judicature.

See J. A. 1873, s. 77; J. A. 1879, s. 9; J. (Off.) Act, 1879, ss. 8, 9.

Appointment of district registrars. 42 & 43 Vict. c. 78.

22. And whereas by the Judicature Acts, 1873, 1875, and 1877, and the Supreme Court of Judicature (Officers) Act, 1879, no provision is made for the appointment of district registrars of the High Court of Justice other than persons holding or having held the offices in section sixty of the Supreme Court of Judicature Act, 1873, and section thirteen of the Supreme Court of Judicature Act, 1875, respectively mentioned: Be it enacted, that if on any vacancy in the office of district registrar under the said Acts, or upon the appointment by any order in council to be hereafter made of any new district within which there shall be a district registrar (unless by such order in council it shall be otherwise directed), it shall appear to the Lord Chancellor, with the concurrence of the Treasury, that from the nature and amount of the business to be transacted by such district registrar it is expedient that such office should be conferred upon a person not so qualified as aforesaid, it shall be lawful for the Lord Chancellor, with the concurrence of the Treasury, to appoint to such office any solicitor of the Supreme Court of Judicature of not less than five years' standing.

A district registrar shall not, either by himself or his partner, be directly or indirectly engaged as solicitor or agent for a party to any proceeding whatsoever in the district registry of which he is registrar.

See J. A. 1873, ss. 60—66; J. A. 1875, s. 13: App. Jur. A. 1876, s. 22; J. A. 1884, s. 12; O. 35.

Jud. Act, 1881, ss. 23—25.

23. [Appointments to keep order, &c. in Royal Courts of Justice.]

Powers as to solicitors.
6 & 7 Vict. c. 73.
23 & 24 Vict. c. 127.
40 & 41 Vict. c. 25.

24. The powers which by an Act passed in the session of the sixth and seventh years of her present Majesty, intituled "An Act for consolidating and amending several of the Laws relating to Attorneys and Solicitors practising in England and Wales," and by section fourteen of the Supreme Court of Judicature Act, 1875, and by the Solicitors Act, 1860, and by the Solicitors Act, 1877, and by any Act amending the said Acts respectively, are vested in the Master of the Rolls jointly with the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer, or with any of them, or jointly with the Presidents of the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court, or with any of them, shall henceforth be vested in the Master of the Rolls, with the concurrence of the Lord Chancellor and the Lord Chief Justice of England, or (in case of difference) of one of them, and anything required by the said Acts to be done to or before the said Lord Chief Justices and Lord Chief Baron, or the said Presidents jointly with the Master of the Rolls, may be done to or before the Master of the Rolls, the Lord Chancellor, and the Lord Chief Justice of England.

[Provision may be made by the Master of the Rolls, with the concurrence of the Lord Chancellor and the Lord Chief Justice of England, or (in case of difference) of one of them, for the care and custody of the Roll of Solicitors after the abolition of the office of Clerk of the Petty Bag.]

The provision in brackets is repealed by Solicitors Act, 1888.

Solicitors.—J. A. 1873, s. 87, p. 449; J. A. 1875, s. 14, p. 467; (n.) "Solicitors," Additional Notes, Pt. IV., p. 356.

By J. A. 1875, s. 14 (before it was in part repealed by S. L. Rev. Act, 1883) the L. C. J. of England, the M. R., the L. C. J. C. P. and the L. C. B. or any two of them had power to adapt enactments relating to attorneys. See now Sol. Act. 1888, ss. 14, 19.

Where a solicitor has neglected for a year to renew his certificate, the Registrar of certificates (Incorp. Law Soc.; see Sol. Act, 1888, s. 5) has power to grant or refuse a fresh one, subject to an appeal to the M. R., see Sol. Act, 1888, s. 16, and the Solicitors Act, 1899, s. 2. Where the certificate has been taken away, cf. "In the Matter of an Application," &c., W. N. (99) 46.

Chief Justice of England to have powers of Chief Justice of Common Pleas and Chief Baron of the Exchequer.

25. Where by any statute any power is given to or any act is required or authorised to be done by the Lord Chief Justice of the Common Pleas and the Lord Chief Baron of the Exchequer, or either of them, either solely or jointly with the Lord Chief Justice of the Queen's Bench or the Lord Chief Justice of England, and either with or without the Lord Chancellor or any judge, officer, or person, such power may henceforth be exercised and such act done by the Lord Chief Justice of England; and where by any statute the concurrence of the Lord Chief Justice of the Common Pleas and the Lord Chief Baron of the Exchequer, or either of them, is required for the exercise of any power, or the performance of any

act, it shall be sufficient henceforth that the Lord Chief Justice of England shall concur therein.

See J. A. 1873, ss. 12, 32 (n.), 76; and s. 17. *supra*.

26. [L. C. J. to appoint commissioners for taking acknowledgment by married women under 3 & 4 Wm. 4, c. 74. See Con. Act, 1882, s. 7, and the Rules thereunder of 1882. Altered by S. L. R. Act, 1894.]

27. [As to powers to make rules for County Courts, is repealed by the S. L. R. Act, 1894.]

SUPREME COURT OF JUDICATURE ACT, 1884.

(47 & 48 VICT. c. 61.)

An Act to amend the Supreme Court of Judicature Acts; and for other purposes. [14th August, 1884.]

Note.—This Act applies to the various Divisions of the S. C., and to all the judges thereof, except where the context shows otherwise. *Per* Cotton, L.J., *Howarth* v. *H.*, 11 P. D., p. 98.

Jud. Act, 1884, ss. 1—5.

Short title.

1. This Act may be cited as the Supreme Court of Judicature Act, 1884; and this Act, together with the Supreme Court of Judicature Acts, 1873 to 1879, and the Supreme Court of Judicature Act, 1881, may be cited as the Supreme Court of Judicature Acts, 1873 to 1884.

2. [Commencement of Act, repealed S. L. Rev. Act, 1898.]

Precedence of President of Probate, &c., Division.

3. The President for the time being of the Probate, Divorce and Admiralty Division of the High Court shall have rank and precedence in the Court of Appeal next after all ordinary Judges of that Court appointed before the time at which he shall have become an ex-officio member thereof.

J. A. 1877, s. 4, *ante*; J. A. 1881, ss. 4, 8; J. A. 1891, s. 1.

Amendment of 39 & 40 Vict. c. 59, s. 17.

4. A Divisional Court of the Queen's Bench Division of the High Court may at any time be constituted of more than two Judges if the President of the said Division, with the concurrence of not less than two other Judges thereof, shall be of opinion that it is expedient so to constitute the same.

"**With the Concurrence.**"—See App. Jur. Act, 1876, s. 17.

This enactment became necessary in consequence of the union of the three Common Law Divisions into the one Queen's Bench Division. By s. 17 of App. Jur. Act, 1876, the concurrence of a majority of the Judges of the Division was necessary before a Divisional Court of more than two Judges could be properly formed. In the absence, therefore, of the provisions of the present section, a majority of all the Judges of the Queen's Bench Division would have been requisite for the constitution of a Divisional Court of more than two Judges of that Division.

Absence, vacancies, and insufficiency in number of Judges.

5. Upon the request of the Lord Chancellor it shall be lawful for any Judge of any Division of the High Court, who may consent so to do, to sit and act for or on behalf of any other Judge of the High Court absent from illness or any other cause, or in the place

of any Judge whose office has become vacant, or as an additional Judge of any Division for the purpose of hearing any causes or matters which may be assigned to him by the Lord Chancellor, or any applications therein ; and while so sitting and acting any such Judge shall have all the power and authority which such other Judge would have had, or which ordinarily belong to a judge of such Division, as the case may be. Provided that no such additional Judge shall sit and act in any division, except with the concurrence of the respective Presidents of the Division to which such Judge belongs, and of the Division in which he may have been requested to sit and act as additional Judge ; and the assignment to such Judge of any causes or matters, depending in the Division in which he shall so sit and act, shall likewise not be made except with the concurrence of the President of such last-mentioned Division.

J. A. 1873, s. 51 ; J. A. 1881, s. 12, *ante*, and the following section.

"**Power and Authority, &c.**"—North, J., after the death of Pearson, J., and assignment of causes hereunder, corrected a judgment of Pearson, J., under O. 28, r. 11. (*Re Blackwell*, W. N. (86) 97.)

This section enables one Division to aid another Division, notwithstanding that all the Judges of the latter Division are sitting. Before this section was enacted a Judge of one Division was only able to sit *instead* of a Judge of another Division.

Power of one Judge to sit for another.

6. Any proceeding in any cause or matter assigned to any Judge of the High Court may at any time, upon the request and on behalf of such Judge, be heard and disposed of by any other Judge of the same Division, who may be willing to hear and dispose of the same, without any transfer: Provided that, if any party to such proceeding shall object to the same being so heard and disposed of, the same shall not be so heard and disposed of without the concurrence of the Lord Chancellor, to be signified by an order in writing under his hand.

See as to transfer O. 49, r. 4A. As to absence of judge, &c., cf. J. A. 1873, ss. 51, 52.

As to actions commenced in C. D. of Liverpool and Manchester Registries, O. 5, r. 9 (n.) ; P. M. R., Vol. I., Part. II. (8), (n.).

13 & 14 Vict. c. 25, extended to County Court Judges.

7. Judges of county courts shall have every qualification conferred on Her Majesty's counsel learned in the law by the Act of the thirteenth and fourteenth Victoria, chapter twenty-five.

J. A. 1873, ss. 26, 29, 37 ; J. A. 1875, s. 8.

Such judges are qualified to be named in any commission of assize, oyer and terminer, or gaol delivery.

Appeals from referees.

36 & 37 Vict. c. 66.

8. The provisions of section forty-five of the Supreme Court of Judicature Act, 1873, as to certain appeals therein mentioned, shall extend and apply to all appeals brought after the commencement of this Act from any award or certificate of a referee or arbitrator when there has been a compulsory reference to arbitration in any cause or matter in the Queen's Bench Division of the High Court.

See O. 59, r. 3 ; O. 40, r. 6 ; O. 64, r. 14. See Arb. Act, 1889, ss. 12, 14, p. 548, *post*.

"**Award or Certificate.**"—Not a judgment. (*Munday* v. *Norton*, (1892) 1 Q. B. 403.)

Jud. Act, 1884, ss. 8—14.

"**Compulsory Reference.**"—Where an order has been made referring an action *for trial*, under O. 36, r. 7A. and Arb. Act, 1889, s. 14, no leave to appeal from an order of a Divisional Court to the C. A. is required hereunder. (*Munday* v. *Norton* (1892), 1 Q. B. 403).

9, 10, and **11.** [These sections are repealed as and from the 1st Jan., 1890, by the Arbitration Act, 1889. See s. 14 thereof, p. 551, *post*.]

Saving as to district registrars.

12. Nothing in this Act shall interfere with any existing provisions as to any proceedings before district registrars.

See J. A. 1873, ss. 60—66; J. A. 1875, s. 13; J. A. 1881, s. 22; O. 35.

Summary applications under statutes. 18 & 19 Vict. c. 134, s. 16.

13. The provisions of section sixteen of the Act eighteen and nineteen Victoria, chapter one hundred and thirty-four, shall extend to all applications under any Act of Parliament heretofore passed, or hereafter to be passed, under or by virtue of which the High Court, or any Judge thereof, is empowered to make orders in respect of trust funds, or any other matters, upon petition presented, or motion made, in a summary way.

The provisions of 18 & 19 Vict. c. 134, s. 16, are as follows:

"And whereas by divers Acts of Parliament the Court of Chancery is empowered to make orders in respect of the disposition of trust funds and other matters under its jurisdiction upon petition presented or motion made in a summary way without Bill, but such orders cannot be made in respect of the same matters upon application at Chambers: Be it therefore enacted that the business to be disposed of by the Master of the Rolls and the Vice-Chancellors respectively while sitting at Chambers shall comprise such of the matters in respect of which the Court of Chancery is so as aforesaid empowered to make orders in a summary way as the Lord Chancellor with the advice and assistance of the Master of the Rolls and the Vice-Chancellor or any two of them may by any general order direct."

This section includes all matters under Acts of Parliament subsequent to the 18 & 19 Vict. c. 134; so that Rules of Court can be made for the transaction in Chambers of any matters under such subsequent statutes, as well as the matters specified in O. 55. See *Re Gill*, 53 L. T. 623.

As to jurisdiction in Chambers, see J. A. 1873, s. 39, p. 428.

Execution of instruments by order of the Court.

14. Where any person neglects or refuses to comply with a judgment or order directing him to execute any conveyance, contract, or other document, or to indorse any negotiable instrument, the court may, on such terms and conditions (if any) as may be just, order that such conveyance, contract, or other document shall be executed, or that such negotiable instrument shall be indorsed by such person as the Court may nominate for that purpose; and in such case the conveyance, contract, document, or instrument so executed or indorsed shall operate and be for all purposes available as if it had been executed or indorsed by the person originally directed to execute or indorse it.

"**Judgment or Order directing,**" **&c.**—Judgment is to state time for doing act, and to have memorandum of consequences indorsed, O. 41, r. 5. Enforcing by attachment, &c., O. 42, r. 7.

Cases.—*Execution of Deed.*—In *Re Edwards*, 33 W. R. 578, the judge on the refusal of a defendant to execute a mortgage deed nominated his chief clerk to execute it.

A husband was ordered to execute a deed for securing his wife a sum of money; he being in contempt and not appearing, the judge on motion

to commit or in the alternative, hereunder, and on proof of service of notice of the application, ordered the registrar to execute the deed. (*Howarth* v. *H.*, 11 P. D. 68.) In *Hoare* v. *Gray*, 31 Sol. Jo. 744, the registrar was named, it being vacation.

Transfer of Consols.—In *Re Cathcart*, (1893) 1 Ch. 466, Bruce, J., directed the official solicitor to transfer consols standing in the name of a lunatic.

Order on married woman to transfer consols standing in her name to L. and L. within seven days. Default made. Order then made on summons by assignee of L. and L. nominating official solicitor to execute transfer. North, J., held, on the authority of *Re Cathcart*, *supra*, there was jurisdiction to make the order. (*Re Lumley*, W. N. (93) 13.) In *Hood-Barrs* v. *Cathcart*, 39 Sol. Jo. 639. the Court ordered the Bank of England to execute a transfer which Mrs. Cathcart had neglected to execute, giving the Bank leave to apply to discharge the order.

Quo warranto.

15. Proceedings in quo warranto shall be deemed to be civil proceedings whether for purposes of appeal or otherwise.

See O. 68, r. 2, and Crown Office Rules, 1886, rr. 51—59.

Amendment of 17 & 18 Vict. c. 34, s. 1.

16. Section one of the Act seventeen and eighteen Victoria, chapter thirty-four, entitled "An Act to enable Courts of Law in "England, Ireland, and Scotland to issue process to compel the "attendance of witnesses out of their jurisdiction, and to give effect "to the service of such process in any part of the United Kingdom," is hereby amended so as to authorise and empower a judge of the High Court to make orders as therein mentioned as well when the Court is sitting as at any other time.

The section referred to is as follows :—

> If in an action or suit now or at any time hereafter depending in any of Her Majesty's Superior Courts of Common Law at Westminster, or Dublin, or the Court of Session or Exchequer in Scotland, it shall appear to the Court in which such action is pending, or if such Court is not sitting, to any judge of any of the said Courts respectively, that it is proper to compel the personal attendance at any trial of any witness who may not be within the jurisdiction of the Court in which such action is pending, it shall be lawful for such Court or judge, if in his or their discretion it shall so seem fit, to order that a writ called a writ of *subpœna ad testificandum* or of *subpœna duces tecum*, or warrant of citation shall issue in special form, commanding such witness to attend such trial wherever he shall be within the United Kingdom, and the service of any such writ or process in any part of the United Kingdom shall be as valid and effectual to all intents and purposes as if the same had been served within the jurisdiction of the Court from which it issues."

The present section enables the jurisdiction given by 17 & 18 Vict. c. 34, s. 1, to be exercised by a judge in chambers at any time.

Subpœnas.—O. 37, r. 20 (n), and rr. 26—34.

Power to transfer interpleader proceedings to County Court. 28 & 29 Vict. c. 99.

17. If it shall appear to the Court or a Judge that any proceeding in the High Court by way of interpleader, in which the amount or value of the matter in dispute does not exceed the sum of five hundred pounds (being the limit of the equitable jurisdiction given to County Courts by the County Courts Act, 1865), may be more conveniently tried and determined in a County Court, the Court or Judge may at any time order the transfer thereof to any County

Jud. Act, 1884, ss. 17, 18.

Court, in which an action or proceeding might have been brought by any one or more of the parties to such interpleader against the others or other of them, if there had been a trust to be executed concerning the matter in question ; and every such order shall have the same effect as if it had been for the transfer of a suit or proceeding under section eight of the County Courts Act, 1867 ; and the County Court shall have jurisdiction and authority to proceed therein, as may be prescribed by any county court rules for the time being in force.

30 & 31 Vict. c. 142.

See O. 57, rr. 8, 9. Cty. Cts. Act, 1888, ss. 67, 69, *post*. Cty. Ct. Rules, 1889, O. 33, rr. 9, 10B.

"**May Order.**"—Form of order, see App. K., No. 56a, p. 140, *ante*.

After the order for transfer the proceedings will remain for all purposes in the Cty. Ct. (*Thomas* v. *Kelly*, 13 App. Cas. 506.)

Interpleader.—The High Ct. has no power to remit, nor the Cty. Ct. to try, an *issue* of interpleader in an action in the High Ct., but only the *entire* interpleader proceedings. (*Vizard* v. *Gill*, 95 L. T. Jo. 255 ; *Greatorex* v. *Shackle*, (1895) 2 Q. B. 249.

As to appeal, see (n.) "Interpleader," App. Jur. Act, 1876, s. 20 (n.), p. 483.

"**County Courts Act, 1865**"—"**County Cts. Act, 1867.**"—By Cty. Cts. Act, 1888, s. 187, "any reference in any of the S. C. of Judicature Acts, and the Statute Law Revision and Civil Procedure Act, 1883, to an inferior Court shall be construed as referring to Courts under this Act as well as to any other inferior Court."

"**Shall have jurisdiction,**" **&c.**—In *Oliver* v. *Lewis*, W. N. (89) 224, it was held that in case of remitter hereunder the Cty. Ct. only has power to try the issue actually remitted, and cannot also adjudicate upon an incidental claim to damages made by the claimant against the execution creditor or High Bailiff.

Jurisdiction of Inferior Courts in counter-claims.

36 & 37 Vict. c. 66.

18. The jurisdiction of an inferior court in cases of counter-claim under sections eighty-nine and ninety of the Supreme Court of Judicature Act, 1873, shall not be excluded by reason (1) that any such counter-claim involves matter not within the local jurisdiction of such inferior court, but within the jurisdiction of any other inferior court in England ; or (2) that, where the counter-claim involves more than one cause of action, as to each of which the defendant might have maintained a separate action, each such cause of action being within the jurisdiction of the court, the aggregate amount of the counter-claim exceeds the jurisdiction of the court ; or (3) that the counter-claim is for an amount of money exceeding the jurisdiction of the court, provided that the plaintiff does not object in writing, within such time as may be prescribed by any rules, to the court giving relief exceeding that which the court would have had jurisdiction to administer prior to the commencement of this Act. In any case where the counter-claim involves matter beyond the jurisdiction of the court, notwithstanding the provisions of this section, the court may, on such terms (if any) as the court may think just, either adjourn the hearing of the case, or stay execution on the judgment, for such time as may be necessary to enable any party to apply to remove the proceedings into the High Court or to enable the defendant to prosecute in a court of competent jurisdiction an action for the purpose of establishing his counter-claim; and in default of any such application being made, or action brought, the court shall, after the expiration of the time limited, have jurisdiction to hear and

determine the whole matter in controversy, to the same extent as if all parties had consented thereto.

See J. A. 1873, ss. 89, 90, p. 450.

Inferior Court.—See s. 17, *supra*, (n.) "County Courts Act," &c.; s. 24, *infra*, (n.) "Any Inferior Court."

This disposes of questions such as those in *Webster* v. *Armstrong*, 54 L. J. Q. B. 236, cited J. A. 1873, s. 90 (n.).

"Does not object," &c.—The time for objecting is two days, O. 10, r. 3, Cty. Ct. Rules, 1889.

As to remitting cases from Superior Court to County Court, see County Courts Act, 1888, s. 65, *post*, p. 571, and cf. *Lewis* v. *L.*, 20 Q. B. D. 56.

19. [The right of filling any vacancy in the office of Master of the Supreme Court, or in any clerkship in the Central Office, is vested in the Lord Chancellor, the Lord Chief Justice of England, and the Master of the Rolls, in rotation or in such order or manner as they by agreement amongst themselves may determine.]

J. (Officers) A. 1879, s. 9.

20. The provisions of section twenty of "The Supreme Court of Judicature (Officers) Act, 1879," with respect to pensions under that Act, shall, as regards appointments made after the commencement of this Act, extend to salaries under that Act.

Civil Service certificates for officers of Supreme Court. 42 & 43 Vict. c. 78.

See Order in Council, June, 1870.

21. [The effect of this section is, that the patronage of judges with respect to circuit appointments is vested in the senior judge going circuit for the winter and summer assizes, and is not exercisable by the judges who travel the autumn and spring circuits. It also transfers to the judges, subject to existing rights, the patronage hitherto exercised by the clerks of assize.]

22. [This section abolished the offices of sworn clerks to examiners in Chancery, and is repealed by S. L. R. Act, 1898.]

23. The power to make rules conferred by section seventeen of the Supreme Court of Judicature Act, 1875, and enactments amending the same, shall be deemed to include the power to make rules for regulating the procedure on appeals from Inferior Courts to the High Court.

Power to make rules.

See J. A. 1875, s. 17; and J. A. 1881, s. 19, (n.) "Rule Committee," p. 496.

"Appeals from Inferior Courts."—See J. A. 1873, s. 45; O. 59, rr. 10—17; and see *Reg.* v. *Kettle*, 17 Q. B. D. 761. As to Lord Mayor's Court, see *Eder* v. *Levy*, 19 Q. B. D. 210.

24. Where by virtue of any statute or charter or otherwise powers of making rules and orders for regulating the procedure or practice of or the costs or fees in any inferior court of civil jurisdiction are given to or have been exercised by the judge of any such court or any other person, either solely or jointly with any other person, and either with or without the concurrence of any judge of Her Majesty's Supreme Court or any other person, any rules or orders made after the commencement of this Act by virtue of any such powers as aforesaid, shall be subject to the concurrence of the authority for the time being empowered to

Rules for Inferior Courts.

Jud. Act, 1884, s. 24

make rules for the Supreme Court: Provided that the same authority may alter or annul any existing rule or order as to the matters aforesaid in any such court, if after communication with the judge or other person by whom such rule or order was made it shall think fit to do so, subject, where such rule has been made with the concurrence of any Judge of the Supreme Court existing at the commencement of this Act, to the consent of such Judge.

"**Powers of making Rules.**"—This section gives to the Rule Committee of the Judges (see J. A. 1881, s. 19 (n.), p. 496) jurisdiction to make rules for all Inferior Courts. As to the powers of Inferior Courts to make rules of procedure, see *Speers* v. *Daggers*, 1 Cab. & Ell. 503; *Fellowes* v. *The Owners, &c.*, (1893) 1 Q. B., p. 104.

By the S. L. Rev., &c., Act, 1883, power is given to the Queen, by Order in Council, to extend to any Inferior Civil Court any of the provisions of the Judicature Acts, or of the rules made under those Acts, with any such modifications as may be necessary or desirable in the same manner as and to the like extent that the provisions of the C. L. P. Acts, and of the general rules made thereunder, might, under the powers given by those Acts, have been extended to any such Court.

The Cty. Ct. Rules, 1889, were framed under Cty. Cts. Act, 1888, s. 164.

"**Any Inferior Court.**"—(See J. A. 1873, s. 88; J. A. 1884, s. 18; S. L. Rev. Act, 1883, s. 9; Cty. Cts. Act, 1888, s. 187, cited *supra*, s. 17 (n.).) The principal Inferior Courts other than County Courts are certain courts of record attached to cities and boroughs, which have power by ancient charters to exercise jurisdiction in certain suits. Of these the chief are:—

The Mayor's Court of London (special Act, 21 & 22 Vict. c. lvii.).

The Liverpool Court of Passage (several special Acts).

The Salford Hundred Court of Record (special Act, 31 & 32 Vict. c. cxxx.).

The Oxford University Chancellor's Court (special Act, 25 & 26 Vict. c. xxvi.).

Other inferior Courts of Record which have no special Acts governing their procedure, are the—

Bristol Tolzey and Pie Poudre Court,
Derby Court of Record,
Exeter Provost Court,
Kingston-upon-Hull Court,
Newark Court of Record,
Northampton Borough Court,
Norwich Guildhall Court,
Peterborough Court of Common Pleas,
Preston Court of Pleas,
Romsey Court of Pleas,
Southwark Court of Record,
Worcester City Court of Pleas.

APPELLATE JURISDICTION ACT, 1887.

(50 & 51 VICT. c. 70.)

An Act to amend the Appellate Jurisdiction Act, 1876.

[16th September, 1887.]

App. Jur. Act, 1887, ss. 1—6.

WHEREAS it is expedient to amend the Appellate Jurisdiction Act, 1876:

39 & 40 Vict. c. 59.

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Lord of Appeal may take his seat during prorogation, printed App. Jur. Act, s. 8 (n.), *ante*, p. 479.

2. Retired Lord of Appeal in Ordinary may sit in House of Lords, printed App. Jur. Act, s. 6 (n.), *ante*, p. 478.

3. Amendment of 3 & 4 Will. 4, c. 41, printed App. Jur. Act, s. 14 (n.), *ante*, p. 480.

4. Remuneration in Judicial Committee, printed App. Jur. Act, s. 14, *ante*, p. 480.

5. Amendment of 39 & 40 Vict. c. 59, s. 25, printed App. Jur. Act, s. 25 (n.), *ante*, p. 484.

6. Short Title, as above.

SUPREME COURT OF JUDICATURE ACT, 1890.

(53 & 54 VICT. c. 44.)

An Act to amend the Supreme Court of Judicature Acts.

[14th August, 1890.]

Jud. Act, 1890, s. 1.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Motions for new trial.

1. From and after the commencement of this Act every motion for a new trial, or to set aside a verdict, finding, or judgment, in any cause or matter in the High Court in which there has been a trial thereof, or of any issue therein with a jury, shall be heard and determined by the Court of Appeal and not by a Divisional Court of the High Court : Provided always, that such motions shall be heard and determined before not less than three Judges of the Court of Appeal sitting together.

This section shall extend to every such motion of which notice may have been given, whether before or after the passing of this Act, but which has not been heard before the commencement of this Act.

Cross References.—Motion for new trial, O. 39, rr. 1A, 4, and 4A. Power to order new trial on an appeal, O. 58, r. 5. Judgment, &c., instead of new trial, O. 40, r. 10.

Practice under this Act.—Motions for new trials hereunder will be dealt with by C. A. as nearly as possible as they were dealt with formerly by Div. Cts. *Per* C. A., *Heckshcr* v. *Crosley*, (1891) 1 Q. B. 224.

Stay of Execution.—The Court will follow the rules of the Q. B. D. and of the C. D. (see O. 42, r. 17 ; O. 58, r. 16 (n.)), and will only grant a stay on "special circumstances," which cannot be the subject of a hard and fast rule. Misdirection, verdict against evidence, no evidence to go to jury, are not "special circumstances." (*Monk* v. *Bartram*, (1891) 1 Q. B. 346.)

Shorthand Notes.—The note of the summing up taken by counsel is all that the Court generally requires, if more is furnished the solicitor may be ordered to pay for, under O. 65, r. 11 ; *White* v. *Bolckow*, 25 L. J. N. C. 125 ; *Campbell* v. *Norwood*, 25 L. J. N. C. 146 ; *Pilling* v. *Joint Stock Institute*, 73 L. T. 570. Cf. O. 58, r. 11 (n.), Vol. I., p. 825 ; O. 65, r. 27 (9), Vol. I., p. 941.

"Every Motion for a New Trial."—See the new rule, made in accordance with the provisions of s. 1 of this Act, O. 39, rr. 1, 1A, and notes thereto, Vol. I., p. 535.

The effect of this rule is to put a motion for a new trial in the same position as an appeal, and so to make O. 58, r. 4, applicable. The Court of Appeal will, therefore, in a proper case, enter judgment,

instead of ordering a new trial. See *Allcock* v. *Hall*, (1891) 1 Q. B. 444, and (n.) "Official Referee," *infra*; also O. 58, r. 4; and O. 40, r. 10. And on an *appeal* a new trial may be ordered, O. 58, r. 5.

Time for Motion.—The notice of motion is a fourteen days' notice, O. 39, r. 4, Vol. I., p. 537, as amended by R. S. C. Feb. 1892, r. 3; and the rule applies to appeals under O. 40, r. 4, which went to the Court of Appeal before the Act (*Dobell* v. *Watts*, 26 L. J. N. C. 114); and as to extension of the time, see the last case and *Wilkins* v. *W.*, (1896) P. 108.

Security for Costs.—No security for costs will be ordered on an appeal for a new trial except in extremely exceptional cases. (*Heckscher* v. *Crosley*, (1891) 1 Q. B. 224; *Walklin* v. *Johns*, 7 Times Rep. 181.) And in a case referred to in 106 L. T. Jo., p. 362, Smith, L.J., is stated to have said it was the invariable rule of the C. A. never to order such security. If it is required to obtain from a plaintiff who has been ordered to give security for the costs of the action, further security for the costs of the motion for a new trial, the application must be first made in Chambers. (*Bentsen* v. *Taylor*, (1893) 2 Q. B. 193.) Cf. O. 58, r. 15 (n.)

Money paid into Court pending Appeal.—Judgment for plaintiff for £15,000. Stay granted pending appeal to C. A., on payment of that sum into Court. The C. A. ordered a new trial. Plaintiff appealed to the House of Lords. Defendant applied for payment out, which the C. A., overruling Judge, ordered. *Seaton* v. *Burnand*, 15 Times Rep. 342.

Moving for Judgment before Moving for New Trial.—In *Burrows* v. *London G. Omnibus Co.*, 10 Times R. 298, judgment was moved for by the plaintiff for amount of verdict, and afterwards he moved for a new trial. Held no objection.

New Trial.—Grounds for Granting.—See O. 39. r. 6. Vol. I., p. 538.

Regulation of Railways Act. 1868.—The Court has no power to grant a new trial of an issue directed under s. 41 of this Act, to determine the right of compensation to lands taken by Ry. Co. (*Birmingham & District Land Co.* v. *L. & N. W. Ry. Co.*, 22 Q. B. D. 435.)

Restraining Consent to New Trial.—In *Wiedemann* v. *Walpole*, 7 Times R. 629, an application was made on behalf of a solicitor who had a charge on the money recovered by plaintiff, to restrain plaintiff from consenting to a motion for a new trial. Refused with costs.

"Or to set aside a Verdict, Finding or Judgment."—Cf. O. 40, rr. 3—5. In a case before the Act, a judge had not entered judgment. The motion was in the alternative, for a new trial, or to set aside the judgment. The judge must now direct judgment to be entered as he shall think right, and no motion for judgment shall be necessary, O. 36, r. 39. (*Stevens* v. *Marston*, 39 W. R. 129.)

Judgment of Non-suit without hearing Evidence.—In *Fletcher* v. *L. & N. W. Ry. Co.*, (1892) 1 Q. B. 122, the judge, after hearing the opening of plaintiff's counsel, non-suited the plaintiff, without his counsel's consent, and without allowing evidence to be called. New trial ordered. See also *Brearley* v. *L. & N. W. Ry. Co.*, 15 Times Rep. 237, and as to the respective duties of judge and jury see the judgment of Lord Cairns in the *Metropolitan Ry. Co.* v. *Jackson*, 3 App. Cas. 193. See as to non-suit, O. 26, r. 1; (n.) "Generally," Vol. I., p. 321, and "Non-suit," *supra*, p. 354.

Judgment as to part of Claim.—In *Wiedemann* v. *Walpole*, 7 Times Rep. an application was made by the defendant to set aside a verdict, and to enter judgment for defendant. The Court entered judgment for defendant upon one issue, leaving the verdict to stand on the others.

Principle on which Court Acts.—The principle upon which the Court

Jud. Act, 1890, s. 1.

acts in setting aside the verdict of a jury on the ground that the verdict is against the weight of the evidence is laid down in *Metropolitan Ry. Co.* v. *Wright*, 11 App. Cas. 152; there must be such a preponderance of evidence as to make it unreasonable, and almost perverse, that the jury, when instructed and assisted properly by the judge, should return such a verdict. But the Court is not to substitute its own opinion as to the facts for that of the duly constituted authority appointed to decide them. The Court will only order a new trial (after verdict) with extreme reluctance and in exceptional cases only. In *Spencer* v. *Jones*, 13 Times Rep. 174, Lopes, L.J., referring to *Metropolitan Ry. Co.* v. *Wright*, said the rule must not be too strictly interpreted; it was never intended to make new trials almost impossible, or to crystallize this into a hard and fast rule, and upon the facts of that case held there should be a new trial, dissenting from the rest of the Court. See this case on appeal, 71 L. T. 536. And see *Ferrand* v. *Bingley, &c.*, 8 Times Rep. 70; *Nyburg* v. *Ullmann*, 8 Times Rep. 440; *Aitken* v. *McMeekan*, (1895) A. C. 310; *Brown* v. *Commissioners for Railways*, 15 App. Cas. 240; *Seaton* v. *Sheridan*, 12 Times R. 285. Whatever the grounds of the application be, the Court will endeavour to determine the matter without a new trial. (*White* v. *Bolckow, &c.*, 25 L. J. N. C. 125.) See (nn.) "A Trial thereof * * with a Jury" and "Trial without Jury," *infra*.

Damages, Excessive, Reduction of.—The principle upon which the C. A. proceeds in reducing damages is stated in *Praed* v. *Graham*, 24 Q. B. D. 53; *McGrath* v. *Bourne*, 10 L. R. Ir. 160; *Gatty* v. *Farquharson*, 9 Times Rep. 593. As to the power of the Ct. to reduce the damages without new trial on consent of plaintiff alone, see *Belt* v. *Lawes*, 12 Q. B. D. 356; *Gatty* v. *Farquharson*, *supra*.

Damages, Assessment of, before Under-Sheriff and Jury.—Action in Q. B. D. on writ of inquiry to under-sheriff to assess plaintiffs' damages, jury assessed them at one farthing. Held by C. A. that the appeal was to that Court, and not to a Div. Ct. *William Radam's Microbe Killer Co.* v. *Leather*, (1892) 1 Q. B. 85.

"A Trial thereof * * with a Jury."

Official Referee.—Although the reports of official referees are, by s. 15, s.s. 2, of the Arb. Act, 1889, p. 558, *post*, "equivalent to the verdict of a jury," these words do not make the inquiry before such referee "a trial with a jury" within this section, and appeals therefrom are to the Divisional Court. (*Glasbrook* v. *Owen*, 7 Times Rep. 62; *Gower* v. *Tobitt*, 39 W. R. 193.)

"In any Cause or Matter."—See next note. The practice with regard to a new trial of a divorce cause *tried by a jury* is now regulated by the practice of the C. A. under this Act. (*Wilkins* v. *W.*, (1896) P. 108.) When not so tried, application for re-hearing should be to P. D. & A. Division. (*Smith* v. *S.*, (1897) P. 293.)

Trial without a Jury.—Divorce.—An appeal from a decision of a judge *sitting without a jury* is a *re-hearing* of the case, and is not governed by the rules applicable to new trials after a trial and verdict by a jury. It is the duty of the Court to re-hear the case and re-consider the materials which were before the judge, with such others as it (the C. A.) may have decided to admit. (*Coghlan* v. *Cumberland*, (1898) 1 Ch. 704 (C. A.), cited O. 58, r. 4, (n.) "Power to draw inference," &c.)

Default in Setting Down for New Trial.—In *Roberts* v. *French*, 43 W. R. 258, the C. A. ordered a new trial. No time was limited by order. The plaintiff did not set down the action. The application to dismiss should be in Chambers, not to C. A.

"Shall be heard by not less than three."—See now J. A. 1899, p. 524.

Jud. Act, 1890, ss. 2—5.

Motions for judgment.

2. Every motion for judgment in any such cause or matter shall be heard and determined by the Judge before whom such trial with a jury took place, and not by a Divisional Court, unless it be impossible or inconvenient that such Judge should act, in which case such motion shall be heard and determined by some other Judge to be nominated by the President of the Division to which the cause or matter belongs.

"**Motion for Judgment.**"—(O. 40.) Under this section the motion must be to the judge who tried the case. (*Stevens* v. *Marston*, 39 W. R. 129, *supra*.) The judge at the trial now directs judgment to be entered without motion, O. 36, r. 39.

Power to make rules.

3. The power of making rules conferred by the Supreme Court of Judicature Act, 1873, and the Acts amending the same shall extend to this Act.

See O. 39, rr. 1, 1A. 2, and J. A. 1881, s. 19, (n.) "Rules of Court," (n.), p. 496, &c.

Criminal and bankruptcy matters.

4. Nothing in this Act shall alter the practice in any criminal cause or matter or in bankruptcy, or in proceedings on the Crown side of the Queen's Bench Division.

"**Criminal Cause.**"—See J. A. 1873, s. 47, *ante*.
"**Bankruptcy.**"—See Bankruptcy Act, 1883, s. 104; O. 58, r. 9, (n.) "In any Bankruptcy Matter."
"**On the Crown side,**" &c. *Costs.*—See s. 5, (n.) "Quarter Sessions," &c., *infra*.

Costs.

5. Subject to the Supreme Court of Judicature Acts, and the rules of Court made thereunder, and to the express provisions of any Statute, whether passed before or after the commencement of this Act, the costs of and incident to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the Court or Judge, and the Court or Judge shall have full power to determine by whom and to what extent such costs are to be paid.

Cross References.—Costs, O. 65, r. 1.

"**Subject to Rules of Court and to the Express Provisions,**" &c.—"The true construction of ss. 4 & 5 is this, that s. 5 is a general enactment and s. 4 has the effect of a proviso on the generality of the words in s. 5," per Esher, M.R., *London C. C.* v. *Overseers*, *infra*.

This section gives statutory force to the power over costs given by O. 65 (*London C. C.* v. *Overseers of West Ham*, (1892) 2 Q. B. 173), and the view of the law held by Cotton, L.J., in *Re Mills' Est.*, 34 C. D. 29, has been confirmed by ss. 4 and 5 of this Act (*Ibid.*) And the last section (5) is an enabling enactment, passed in consequence of the decision in *Re Mills*, and *creates a new jurisdiction*, per Kay, L.J., *Re Fisher*, (1894) 1 Ch. p. 453.

"**Costs of and incident to all Proceedings.**"

Costs.—Payment Out.—In *Re Fisher*, (1894) 1 Ch. 450, an Act authorising compulsory purchase on payment into Court, had not provided for the costs of payment out. But the Court held that this section created a *new jurisdiction*, and that it had jurisdiction hereunder to order the payment of such costs. And see *Reg.* v. *Jones*; *Freeman* v. *General, &c. Co.*; *Re Knox's T.*, *infra*.

Costs under Special Statute.—In *Hasker* v. *Wood*, 54 L. J. (Q. B.) 419, it was decided that the R. S. C. do not overrule the provisions of special statutes giving special costs in particular cases This

Jud. Act, 1890, s. 5.

section was not referred to in *Reeve* v. *Gibson*, (1891) 1 Q. B. 652. See Public Authorities, &c., Act, *infra*.

Costs of First Trial.—Where no direction is given as to the costs of the first trial, or the application for a new trial, they follow the event of the new trial or of the action, as the case may be. (*Field* v. *Great Northern Ry. Co.*, 3 Ex. D. 261 ; O. 65, r. 1, *post*.) Where a rule *nisi* for a new trial was discharged by the court below and afterwards made absolute by the Court of Appeal, the costs of the appeal were directed to be the appellants in any event. (*Anderson* v. *Pellier*, W. N. (78) 129.)

Payment of costs should not be made a condition of granting a new trial where the verdict is unsatisfactory. (*Managers of Metro. Asylums* v. *Hill*, 47 L. T. 29.)

Costs of Former Trial to Abide Result of N. T.—Where, in ordering a new trial, the C. A. directed that the costs of the former trial should abide the result of the new trial, and at the second trial the plaintiff obtained a verdict for one farthing damages and was refused a certificate for costs, held that the "result of the new trial" meant the result of that trial as to costs, and therefore plaintiff was not entitled to any costs of the first trial. (*Brotherton* v. *Metropolitan District Ry. Joint Committee*, (1894) 1 Q. B. 666.) Cf. *Jones* v. *Richards*, 15 Times Rep. 398.

Quarter Sessions Successful Appellant.—The practice on the Crown side of the Q. B. D. is unaltered by this Act. (See s. 4, *supra*, O. 68, r. 1.) And there is therefore no power hereunder to give costs to a successful appellant in a case stated by Quarter Sessions. (*London C. C.* v. *Overseers of West Ham*, (1892) 2 Q. B. 173.) But by the J. A. 1894, s. 2, p. 520, every case stated by quarter sessions otherwise than under 11 & 12 Vict. c. 78, and 12 & 13 Vict. c. 45, is to be *deemed an appeal*, and on the hearing thereof the Appellate Court is to have full power as to costs of the proceedings in that Court and in the Court of Quarter Sessions.

Prohibition.—This not being a jurisdiction peculiar to the Crown side, the High Court has all the jurisdiction as to costs formerly exercised by the Court of Chancery, Common Pleas, and Exchequer. (*Reg.* v. *Justices of City of London*, (1894) 1 Q. B. 453.)

Habeas Corpus.—The Court has now power over the costs on a motion for habeas corpus. (*Reg.* v. *Jones*, (1894) 2 Q. B. 382.)

Costs of Application to restrain Action.—On an application to restrain an action under Coy.'s Act, 1862, s. 85, the Court may order plaintiff to pay the costs of the application. (*Freeman* v. *General, &c. Co.*, (1894) 2 Q. B. 380.)

Jurisdiction of P. D. & Ad. Div.—This Div. has no jurisdiction to order payment of the costs of a Probate action out of the real estate, and except under special circumstances the C. D. has no jurisdiction to order the costs of a Probate action so to be paid. (*Re Shaw*, (1894) 3 Ch., p. 620.)

"**Shall be in the discretion of the Court.**"—The C. A. will assume the judge has exercised his discretion, unless it is satisfied that he has not exercised it, but has applied some rule which in fact has excluded his discretion. *Bew* v. *B.*, W. N., (99) C. A. p. 132, and (n.) "In the discretion," O. 65, r. 1.

"**By whom and to what extent such Costs are to be paid.**"—In *Ward* v. *Procter*, 7 Times Rep. 244, the judge in chambers ordered the solicitor to pay personally the costs of an appeal from a master's order, but the Court of Appeal varied the order as to personal payment. See O. 65, rr. 5 and 11.

Trustee Act, 1893, *s.* 38.—The Court has power on petition for a vesting order under s. 35, to make trustees who have improperly refused to transfer, pay the costs. (*Re Knox's T.*, (1895) 1 Ch. 538 ; 2 Ch. 483.)

Solicitor and Client Costs.—See this (n.), O. 65, r. 1, Vol. I., p. 895. In *Andrews* v. *Barnes*, (1888) 39 C. D. 133, it was held the High Court had the right to grant these costs in matters of equitable jurisdiction—but whether it had the same power in matters of

Common Law Jurisdiction was not decided. *Semble*, that under this section it has.

Public Authorities Protection Act, 1893.—This Act, s. 1 (b), applies to all actions, including actions in C. D., but not to appeals or interlocutory applications; and the Court on dismissal of an action under the section must give solicitor and client costs. (*Fielding* v. *The Mayor, &c., of Morley*, (1899) 1 Ch. 1 (C. A.).) See this (n.), O. 65, r. 1, Vol. I., p. 895.

Extent of Act.

6. This Act shall not apply to Ireland or Scotland.

Commencement and short title.

7. This Act shall commence on the twenty-fourth day of October one thousand eight hundred and ninety, and may be cited for all purposes as the Supreme Court of Judicature Act, 1890.

SUPREME COURT OF JUDICATURE (LONDON CAUSES) ACT, 1891.

(54 & 55 VICT. c. 14.)

An Act to provide for the Trial of Civil Causes in the City of London. [11th May, 1891.]

Jud. Act, 1891, ss. 1, 2.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Sittings may be held by judges in the City.

28 & 29 Vict. c. 48.

1. Notwithstanding anything in the Courts of Justice Building Act, 1865, or any Order in Council thereunder contained, sittings may be held in the City of London by judges of the High Court under commissions issued for the trial of issues or inquiries in cases at nisi prius.

See J. A. 1873, ss. 26, 30, 37, and (nn.).

"**May be held in the City of London.**"—Of the jury actions entered for trial at the Associates' Department, R. C. J., wherein the venue is laid in the City of London, a list will be kept for trial at the Guildhall under commission issued hereunder.

By O. 36, r. 29A, Dec. 1891, the plaintiff or his solicitor in any action in the London list may apply to the master of the Associates' Department to have the action tried at the Guildhall ; and the master may order it to be there tried, subject to any order made by the Lord Chief Justice of England, or in his absence by the senior judge of the Queen's Bench Division in London, on the application being adjourned before him, whose decision shall respectively be final.

By O. 36, r. 29B, Aug. 1892, the venue of every action entered in the London List and not ordered to be tried at Guildhall, pursuant to Order XXXVI., Rule 29A, shall be changed to Middlesex by the Master of the Associates' Department, subject to appeal to the Lord Chief Justice of England, or, in his absence, to the senior judge of the Queen's Bench Division who may be present at the Royal Courts of Justice.

Short title.

2. This Act may be cited as the Supreme Court of Judicature (London Causes) Act, 1891.

SUPREME COURT OF JUDICATURE ACT, 1891.

(54 & 55 VICT. c. 53.)

An Act to amend the Supreme Court of Judicature Acts.

[5th August, 1891.]

Jud. Act, 1891, ss. 1—4.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Ex-Lord Chancellor to be a judge of Court of Appeal.

1. Every person who has held the office of Lord Chancellor shall be an ex-officio judge of the Court of Appeal, but he shall not be required to sit and act as a judge of that court, unless upon the request of the Lord Chancellor he consents so to do, and while so sitting and acting he shall rank therein according to his precedence as a peer.

"**Ex-officio Judge of C. A.**"—See J. A. 1875, ss. 4, 6; J. A. 1881, s. 4; J. A. 1884, s. 3.

President of Probate, Divorce, and Admiralty Division.

2. Whenever there is a vacancy in the office of a judge of the High Court who is president of the Probate, Divorce, and Admiralty Division thereof, it shall be lawful for Her Majesty, by letters patent, to appoint to that office as president of the said division any person who is a barrister of not less than fifteen years' standing, or who is a judge of the High Court or Court of Appeal, and the person so appointed shall, without prejudice to the rights of any judge of the Supreme Court existing at the passing of this Act, take precedence in Court next after all ordinary judges of the Court of Appeal appointed before the time at which he shall become an ordinary or ex-officio member thereof.

Precedence.—See J. A. 1881, ss. 4, 8; J. A. 1884, s. 3.

Assessors House of Lords.

3. For the purpose of aiding the House of Lords in the hearing and determination of appeals in Admiralty actions, the House may, in any such appeal in which it may think it expedient to do so, call in the aid of one or more assessors specially qualified and hear such appeal wholly or partially with the assistance of such assessors.

This section shall be carried into effect in pursuance of orders made by the House of Lords.

See "Directions for Agents," Part VII., Direction 38, p. 654, *post*.

Explanation of position of High

4. Whereas doubts have arisen with respect to the position of the High Court in England and appeals therefrom in cases of

Jud. Act, 1891, ss. 4, 5.

prize, and it is expedient to remove such doubts: Be it therefore enacted as follows:

Court of Justice under 27 & 28 Vict. c. 25.

(1.) The High Court in England shall be a prize court within the meaning of the Naval Prize Act, 1864, and shall have all such jurisdiction on the high seas and throughout Her Majesty's dominions, and in every place where Her Majesty has jurisdiction, as under the Naval Prize Act, 1864, or otherwise the High Court of Admiralty possessed when acting as a prize court.

(2.) Subject to rules of court, all causes and matters within the jurisdiction of the High Court under this Act as a prize court shall be assigned to the Probate, Divorce, and Admiralty Division of the Court.

"**Assigned.**"—J. A. 1873, s. 34; O. 5, r. 5.

(3.) Any appeal from the High Court when acting as a prize court shall lie only to Her Majesty in Council, in accordance with the Naval Prize Act, 1864.

Short title and construction.

5. This Act may be cited as the Supreme Court of Judicature Act, 1891, and shall be construed as one with the Supreme Court of Judicature Acts, 1873 to 1890, which Acts, with this Act, may be cited together as the Judicature Acts, 1873 to 1891.

SUPREME COURT OF JUDICATURE (PROCEDURE) ACT, 1894.

(57 & 58 VICT. c. 16.)

An Act to amend the Supreme Court of Judicature Acts.

[3rd July, 1894.]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Appeals.

As to what matters are or are not appealable generally, see J. A. 1873, s. 19 (n.), p. 394.

Jud. Act, 1894, s. 1.

1.—(1.) No appeal shall lie—

Regulations as to appeals.

"**No Appeal.**"—This only applies to appeals from the Court of first instance to the C.A., not to appeals from a judgment of the C.A. to the House of Lords. (*Ford's Hotel Co.* v. *Bartlett*, (1896) A. C. 1.)

A motion to discharge or vary an order made by a single judge of the C. A. under J. A. 1873, s. 52, is not an appeal hereunder. (*Boyd* v. *Bischofsheim*, (1895) 1 Ch. 1.)

A rehearing on motion in C. D. before the judge in Court of a decision in chambers, is not an *appeal* but a *rehearing*. Per Cotton, L.J., *Re Giles*, (1890) 43 C. D. 395. See J. A. 1873, s. 50, and *Boake* v. *Stevenson*, (1895) 1 Ch. 358.

Chancery of Lancaster.—By virtue of the Chancery of Lancaster Act, 1890, s. 4, this Act applies to the Palatine Court. (*Dowson* v. *Drosophor*, 39 Sol. Jo. 262; 12 R. 138.—C. A.)

(*a.*) From an order allowing an extension of time for appealing from a judgment or order; nor

(*b.*) Without the leave of the Judge, or of the Court of Appeal, from any interlocutory order or interlocutory judgment made or given by a Judge, except in the following cases, namely:—

"**Without the leave.**"—In *Ex p. Stevenson*, (1892) 1 Q. B. 611, it was decided that where leave was refused by *the* legal authority to whom power was given to grant it, no appeal lay from such refusal, see J. A. 1873, s. 45, (n.) "Unless special leave," p. 433, and *Ibid.* s. 49, (n.) "Except by leave," p. 438. But in this case there are *two* legal authorities, and if the judge refuses the C. A. may grant, see (n.) "Or by the C. A.," s. 1 (5), p. 520, *infra*.

"**Any interlocutory order,**" **&c.**—See the definition of an interlocutory order given in *Salaman* v. *Warner*, (1891) 1 Q. B. 734 (C. A.), and

Jud. Act, 1894, s. 1.

see (n.) "Final," "Interlocutory," O. 58, rr. 3, 15. The following orders have been held "interlocutory" hereunder: An order made on a motion under O. 25, rr. 2, 3, for instance, is not now appealable without leave. (*Salaman* v. *Warner*, *supra*; as to r. 4 of same Order see *Price* v. *Phillips*. 11 Times Rep. 86.) An order on a creditor's claim in an action for administration. (*Re Abdy*, W. N. (95) 12.) An order for a commission to examine. (*Edison-Bell & Co.* v. *Hough*, 98 L. T. Jo. 374.) Sometimes the C. A. will hear an appeal without deciding whether the order appealed from is interlocutory or final. (*Re Hodgkinson*, 98 L. T. Jo. 423.)

As to hearing of interlocutory appeals by two judges of C. A., see J. A. 1875, s. 12, *ante*. As to "practice and procedure," see (4) *infra*.

Special Provisions.—The generality of this sub-section does not override the specific provisions of a special Act, *e.g.* The Municipal Elections Act, cf. *Monkswell* v. *Thompson*, (1898) 1 Q. B. 353. So where by J. A. 1873, s. 49, the leave of the judge making the order is required before an appeal can be made, the leave of the C. A. is not sufficient. (*Adlington* v. *Conyngham*, (1898) 2 Q. B. 492 (C. A.).)

(i.) Where the liberty of the subject or the custody of infants is concerned; and

Habeas Corpus.—See this (n.), p. 396, and *Ex p. Emerson*, 1 Times Rep. 218.

As to whether, if a motion to commit has been refused, leave to appeal is required, cf. *Lancashire* v. *Hunt*, W. N. (95) 52.

(ii.) Cases of granting or refusing an injunction or appointing a receiver; and

(iii.) Any decision determining the claim of any creditor or the liability of any contributory, or the liability of any director or other officer under the Companies Acts, 1862 to 1890, in respect of misfeasance or otherwise; and

(iv.) Any decree nisi in a matrimonial cause, and any judgment or order in an admiralty action determining liability; and

(v.) Any order on a special case stated under the Arbitration Act, 1889; and

See Arb. Act, 1889, s. 7, (n.) "Appeal," and s. 19, (n.) "No Appeal," *post*.

(vi.) such other cases, to be prescribed by rules of court, as may in the opinion of the authority for making such rules be of the nature of final decisions.

"**Final Decisions.**"—A summons in an administration action to adjust loss from breach of trust is in the nature of a "final decision," and *semble*, pending the making of rules, leave to appeal is not necessary. (*Chillingworth* v. *Chambers*, W. N. (95) 136.)

As to hearing of final orders, and as to what are, see J. A. 1875, s. 12, *ante*, and O. 58, r. 15 (n.).

(2.) An order refusing unconditional leave to defend an action shall not be deemed to be an interlocutory order within the meaning of this section.

"**Refusing Unconditional Leave,**" &c.—An appeal against such refusal lies to C. A., without leave, see (4), *infra*.

Jud. Act, 1894, s. 1.

(3.) No appeal shall lie from an order of a Judge giving unconditional leave to defend an action.

(4.) In matters of practice and procedure every appeal from a Judge shall be to the Court of Appeal.

"**Practice and Procedure.**"—*Except* in these matters the appeal is to a Div. Ct., see O. 54, r. 23. It is the practice to regard every order made by the Judge in Chambers (see J. A. 1873, s. 50) as, *primâ facie*, an order made in a matter of "practice and procedure," and the appeals are entered in the C. A. list. Thus, all appeals under O. 14 are regarded as "practice and procedure."

Applications within these terms.—A summons to review taxation. (*Re Oddy*, (1895) 1 Q. B. 392.) A question as to whether execution should issue or not, probably is. (*Wilson* v. *Parker*, 39 Sol. Jo. 180.) Refusal to appoint receiver. (*Hood-Barrs* v. *Cathcart*, 11 Times Rep. 262.) A summons asking for an interim injunction. (*McHarg* v. *Universal Stock Exchange*, (1895) 2 Q. B. 81.) An appeal from a Judge at Chambers making a garnishee order absolute. (*Hockley* v. *Ansah*, 44 W. R. 666.) Application for leave to revoke a submission to arbitration. (*Re, &c., The Portland Urban D. C.*, (1896) 2 Q. B. 98.) Orders to strike out or stay under O. 25. (*Price* v. *Phillips*, 11 Times Rep. 86; *Hind* v. *Harlington*, 6 Times Rep. 267.) An appeal against order of Judge at Chambers giving leave to plaintiff to enter final judgment under O. 14, r. 1. (*Cannon Brewery Co.* v. *Gilby*, 75 L. T. 407.)

Applications not within these terms.—Action in County Court and order by Judge as to plaintiff's costs. Application by defendant at Chambers for writ of prohibition to County Court Judge to restrain him from exceeding his jurisdiction. Judge at Chambers dismissed application, and defendant appealed to C. A. Held, he should have appealed to Div. Ct., for "practice and procedure" here means practice and procedure *in connection with a cause or matter in the High Court*. *Watson* v. *Petts*, (1899) 1 Q. B. 54; *Morton* v. *Emanuel*, 43 Sol. Jo. 97.

"**Every Appeal from a Judge.**"—That is, where, in cases requiring leave to appeal, the required leave has been given.

Orders for Service out of Jurisdiction.—Application to discharge an order for service out of the jurisdiction should be made as stated in O. 12, r. 30, (n.) "Notice of Motion," and see *Black* v. *Dawson*, (1895) 1 Q. B. 848; *Honduras Banking Co.* v. *Compagnie, &c.*, par. 40 Sol. Jo. 288, 289.

Interlocutory Orders.—As to leave being required, see s. 1, s.s. 1 (b), and *Re Oddy*, *Price* v. *Phillips*, *supra*.

"**To the C. A.**"—Summonses at Chambers should not now be referred to the Court where the appeal is to the C. A. The Judge should either make an order or refuse it. (*Hood-Barrs* v. *Cathcart*, 64 L. J. Q. B. 352; *Roberts* v. *Plant*, (1895) 1 Q. B. 597.)

(5.) In all cases where there is a right of appeal to the High Court from any court or person, the appeal shall be heard and determined by a Divisional Court constituted as may be prescribed by rules of court; and the determination thereof by the Divisional Court shall be final, unless leave to appeal is given by that Court or by the Court of Appeal.

"**In all cases.**"—See, as to these words, the judgment of Charles, J., in *McHarg* v. *Universal S. E.*, (1895) 2 Q. B., p. 83, and see J. A. 1873, s. 45, p. 431.

"**A Right of Appeal to the High Court.**"—A "right" of appeal, not a power on leave, see *Re Oddy*, (1895) 1 Q. B., p. 394; *Adlington* v. *Conyngham*, *infra*.

Jud. Act, 1894, ss. 1, 2.

"**Any Court or Person.**"—An official referee trying a case under an order, directed judgment to be entered for a certain sum. Application for leave to appeal to the C. A. was made to a Div. Ct. The Court, whilst thinking that leave was not required, gave leave. (*Murdock* v. *The Mayor, &c.*, 41 Sol. Jo. 258.)

"**Divisional Court.**"—See J. A. 1873, s. 45, and (n.) "Unless special leave," p. 433.

Guardianship of Infants Act.—See s. 10 of the Act, and (n.), p. 598.

Finance Act, 1894.—See R. S. C., Part V., p. 527.

Prize Court Appeals.—J. A. 1891, s. 4, p. 516.

Special Divisional Court.—Cf. *Kruse* v. *Johnson*, (1898) 2 Q. B. p. 102.

"**Or by the C. A.**"—The application hereunder should be to the Div. Ct. in the first instance, and if that Court refuses leave, the C. A. may be applied to, cf. (n.) "Without the leave," p. 517, and *Holland* v. *Girling*, 43 Sol. Jo., p. 300, &c. The rule of the C. A. is to refuse leave unless the applicant can show clearly and briefly, without going through all the evidence in the case, that injustice has been done. (*Hawkins* v. *G. W. R. Co.*, 14 R. 360.) The Court of first instance should always exercise its discretion, as to which see *Bew* v. *B.*, cited (n.) "Shall be in," &c., p. 512, and not leave the matter to the C. A., see 105 L. T. Jo., p. 1.

Costs, Appeal as to.—Where leave to appeal must be given by the *judge making the order*, as in J. A. 1873, s. 49, in respect of an appeal as to costs, the C. A. cannot effectively give leave if such judge has refused to do so. (*Adlington* v. *Conyngham*, (1898) 2 Q. B. 492 (C. A.).)

Application.—The application must always be "*ex parte*," see (6), *infra*.

(6.) An application for leave to appeal may be made ex parte or otherwise, as may be prescribed by Rules of Court.

"**Leave to Appeal.**"—See s. 1 (1) (b) (n.) "Without leave," p. 517.

"**Ex parte.**"—These applications should always be made *ex parte*. If something else is asked for, such as extension of time, and the Court wishes the other side to be heard, it will direct notice to be served. (*Cty. Co. of Dorset* v. *Pethick*, 14 Times Rep. 183; *Morton* v. Emanuel, 43 Sol. Jo. 97.)

Appeals from quarter sessions.

2.—(1.) Every case stated by a court of quarter sessions otherwise than under the Acts eleven and twelve Victoria, chapter seventy-eight, and twelve and thirteen Victoria, chapter forty-five, for the consideration of the High Court shall be deemed to be an appeal, and shall be heard and determined accordingly.

See (n.) "Special case," J. A. 1873, s. 19, p. 397. The Act 11 & 12 Vict. c. 78, is an Act giving power to a judge at a trial to state a case for opinion of judges. The Act 12 & 13 Vict. c. 45, is Baines's Act.

(2.) On the hearing of any appeal from a court of quarter sessions the appellate court may draw any inference of fact which might have been drawn in the court of quarter sessions, and may give any judgment or make any order which ought to have been given or made by that court, or may remit the order, and in criminal matters the conviction with the order, and the case stated on it, with the opinion or direction of the appellate court, for re-hearing and determination by the court of quarter sessions, or may remit the case for re-statement.

(3.) On the hearing of any such appeal the appellate court shall have full power to determine how and by whom the costs of the proceedings in the appellate court and in the court of quarter sessions are to be borne. Jud. Act, 1894, ss. 2—4.

"**Costs.**"—See J. A. 1890, s. 5, and (n.) "Quarter Sessions," &c., p. 512.

(4.) The judgment on any such appeal, or, where an appeal to a court of quarter sessions has been directed to be entered for re-hearing, then that appeal, shall on motion by any party to the appeal, be entered at the sessions next or next but one after the delivery of the judgment, or the giving of the direction, and shall, unless the appellate court otherwise directs, have effect as if the judgment had been given, or, in case of an appeal directed to be re-heard, the appeal had been heard and determined by the court of quarter sessions at the time of the decision in respect of which the appeal from quarter sessions was brought, and entry and respite of any appeal to quarter sessions in respect of which a case has been stated for the consideration of the High Court shall not be necessary.

Appeal from Divisional Court to C. A.—See s. 1 (5), p. 519, and (n.) J. A. 1873, s. 45, "Unless special leave," p. 433.

Rules of Court.

3. It is hereby declared that the power to make rules conferred by the Judicature Acts, 1873 to 1891, includes power to make rules for regulating the means by which particular facts may be proved and the mode in which evidence thereof may be given:— Explanation of power to make rules.

"**Power,**" **&c.**—See (n.) "Rule Committee." J. A. 1881. s. 19, p. 496.
"**Facts * * may be proved.**"—See O. 30, r. 7. As to applications to dispense with technical rules of evidence in commercial causes. See Official Regulations, Pt. VI., *post*, Regulation 6, p. 636.
"**Evidence.**"—See J. A. 1875, s. 20, p. 470.

(*a.*) On any application in any matter or proceeding relating to the distribution of any fund or property, whether in court or not; and
(*b.*) On any application upon summons for directions pursuant to such rules.

See O. 30, r. 7, and s. 6, *infra*.

4. The persons in whom the power of making rules of court pursuant to section seventeen of the Appellate Jurisdiction Act, 1876, and section nineteen of the Supreme Court of Judicature Act, 1881, is vested, shall include the President of the Incorporated Law Society for the time being, and shall also include two persons (one of whom shall be a practising barrister) to be appointed for the purpose in the same manner as the four judges in the last-mentioned section referred to. Amendment of provisions as to Rule Committee. 39 & 40 Vict. c. 59. 44 & 45 Vict. c. 68.

"**The Persons in whom.**"—See (n.) "Rule Committee," J. A. 1881, s. 19, p. 496.

Power to make rules of court as to enactments in schedule.

5. The power to make rules conferred by the Judicature Acts, 1873 to 1891, shall include power to make rules with respect to the matters contained in and regulated by the enactments described in the schedule to this Act.

Rules as to payments out of court. 35 & 36 Vict. c. 44. 46 & 47 Vict. c. 29.

6. Rules made by the Lord Chancellor with the concurrence of the Treasury under the Chancery Funds Act, 1872, or the Supreme Court of Judicature (Funds, &c.) Act, 1883, may determine the smallest amount which shall, notwithstanding any order of the court, be paid by the Paymaster-General: Provided as follows:—

(1.) Nothing in this section shall apply to any periodical payments of annuities, or of dividends or interest of funds in court;

(2.) The amount so determined shall not exceed one shilling; and

(3.) Any sums retained by the Paymaster-General in accordance with any such rule shall, in such manner as the Treasury may direct, be either paid into the Exchequer or appropriated in aid of the moneys granted by Parliament for the expenses of the Supreme Court.

See J. A. 1875, s. 30, p. 474.

Short Title.

Short title and commencement.

7. This Act may be cited as the Supreme Court of Judicature Act, 1894, and shall be read with the Judicature Acts, 1873 to 1891, and shall come into operation at the expiration of two months after the passing thereof.

SCHEDULE.

See Section 5.

Session and Chapter.	Title or Short Title.	—
8 & 9 Will. 3, c. 11.	An Act for the better preventing frivolous and vexatious suits.	Section eight.
39 & 40 Geo. 3, c. 36	An Act the title of which begins with the words "An Act to enable courts of equity" and ends with the words "party thereto."	The whole Act.
10 Geo. 4, c. 13 .	An Act to provide for monies paid into court under Acts afterwards repealed.	The whole Act.
3 & 4 Will. 4, c. 42.	An Act for the further amendment of the law and the better advancement of justice.	Sections sixteen and eighteen.
1 & 2 Vict. c. 110 .	An Act the title of which begins with the words "An Act for abolishing arrest" and ends with the words "debtors in England."	Sections fourteen and fifteen.
3 & 4 Vict. c. 82 .	An Act for further amending the Act for abolishing arrest in mesne process in civil actions.	Section one.
5 Vict. c. 5 . .	An Act to make further provisions for the administration of justice.	Section four.
15 & 16 Vict. c. 76 .	The Common Law Procedure Act, 1852.	Section one hundred and thirty-two.
23 & 24 Vict. c. 126	The Common Law Procedure Act, 1860.	Section seventeen.
30 & 31 Vict. c. 47 .	An Act the title of which begins with the words "An Act to amend" and ends with the words "Crown debts and on judgments."	The whole Act.
31 & 32 Vict. c. 40 .	The Partition Act, 1868 .	The whole Act.
39 & 40 Vict. c. 17 .	The Partition Act, 1876 . .	The whole Act.

SUPREME COURT OF JUDICATURE ACT, 1899.

(62 VICT. c. 6.)

An Act to amend the Law with respect to the hearing of Appeals and Motions by the Court of Appeal. [6th June, 1899.]

Jud. Act, 1899. ss. 1, 2.

BE IT ENACTED, &c.

Power for two judges to hear appeal or motion. 38 & 39 Vict. c. 77. 53 & 54 Vict. c. 44.

1. Notwithstanding anything in section twelve of the Supreme Court of Judicature Act, 1875, or in section one of the Supreme Court of Judicature Act, 1890, if all parties to an appeal or motion before the hearing file a consent to the appeal or motion being heard and determined before two judges of the Court of Appeal, the appeal or motion may be heard and determined accordingly, subject nevertheless to the same right, if any, of appeal to the House of Lords as if the hearing and determination had been before three judges. Provided that in all causes or matters to which any infant or person of unsound mind, whether so found by inquisition or not, or person under any other disability is a party, no such consent shall be given by the next friend, guardian, committee, or other person acting on behalf of the person under disability, so as to have the same force and effect as if such party were under no disability and had given such consent, unless with the previous consent of a court or a judge, nor so as to make such consent valid as between any committee of a lunatic and the lunatic, unless with the previous sanction of the Lord Chancellor or Lords Justices sitting in lunacy.

And provided also that if two judges having heard an appeal or motion shall differ in opinion, the case shall, on the application of any party to the appeal, be reargued and determined by three judges of the Court of Appeal before appeal to the House of Lords.

Short title.

2. This Act may be cited as the Supreme Court of Judicature Act, 1899, and may be cited with the Judicature Acts, 1873 to 1894.

Notice under the Act.

A separate list will be kept of all appeals and motions for new trials which the parties shall consent to have heard and determined by two judges of the Court of Appeal under 62 Vict. c. 6.

Whenever, owing to illness or other unforeseen occurrence, two judges only can sit in one of the Appeal Courts, cases in such list will be taken in their order after the usual interlocutory appeals are disposed of.

The necessary consents must be filed before any case is entered in the separate list; but no case will lose its place in the general list nor will its hearing be postponed by being entered in the separate list.

Notice that the consents have been filed must be given to Mr. Hull (Cause Clerk, Room 136), who will keep the separate list above mentioned.

HALSBURY, C.

23rd June, 1889.

NATHANIEL LINDLEY, M.R.

In *Re Hope*, the first case under the Act, the respondent's counsel was called upon to satisfy the Court that the necessary consents had been obtained and filed. The procuring and filing of such consents is made a condition precedent to the hearing of the appeal. (43 Sol. Jo. 649.)

"**Consent of Infants, &c., Lunatics, &c.**"—Cf. O. 16, r. 21.

APPEAL (FORMÂ PAUPERIS) ACT, 1893.

(56 & 57 VICT. c. 22.)

An Act to amend the Appellate Jurisdiction Act, 1876, *so far as regards Appeals in Formâ Pauperis.* [29th June, 1893.]

Appeal (Formâ Pauperis) Act, 1893, ss. 1, 2.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Power to refuse to appeal in formâ pauperis.

1. Where in an appeal to the House of Lords a petition is presented for leave to sue in formâ pauperis, and the House on the report of its Appeal Committee determines that there is no primâ facie case for the appeal, the House may refuse the prayer of the petition.

Short title.

2. This Act may be cited as the Appeal (Formâ Pauperis) Act, 1893.

See "Appeals to House of Lords," Pt. VII., note "Paupers," p. 644.

RULES PUBLICATION ACT, 1893.

(56 & 57 VICT. c. 66.)

An Act for the Publication of Statutory Rules.

[21st December, 1893.]

Rules Act, 1893, s. 1.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Notice of and representation respecting certain draft rules.

1.—(1.) At least forty days before making any statutory rules to which this section applies, notice of the proposal to make the rules, and of the place where copies of the draft rules may be obtained, shall be published in the London Gazette.

(2.) During those forty days any public body may obtain copies of such draft rules on payment of not exceeding threepence per folio, and any representations or suggestions made in writing by a public body interested to the authority proposing to make the rules shall be taken into consideration by that authority before finally settling the rules ; and on the expiration of those forty days the rules may be made by the rule-making authority, either as originally drawn or as amended by such authority, and shall come into operation forthwith or at such time as may be prescribed in the rules.

Rule Committee. See J. A. 1881, s. 19 (n.), p. 496.

Rules Act, 1893, ss. 1—3.

(3.) Any enactment which provides that any statutory rules to which this section applies shall not come into operation for a specified period after they are made is hereby repealed, but this repeal shall not affect section thirty-seven of the Interpretation Act, 1889.

52 & 53 Vict. c. 63.

(4.) The statutory rules to which this section applies are those made in pursuance of any Act of Parliament which directs the statutory rules to be laid before Parliament, but do not include any statutory rules if the same or a draft thereof are required to be laid before Parliament for any period before the rules come into operation, nor do they include rules made by the Local Government Board for England or Ireland, the Board of Trade, or the Revenue Departments, or by or for the purpose of the Post Office ; nor rules made by the Board of Agriculture under the Contagious Diseases (Animals) Act, 1878, and the Acts amending the same.

41 & 42 Vict. c. 74. 55 & 56 Vict. c. 47.

"**Laid before Parliament.**"—By J. A. 1875, s. 17, and J. A. 1876, s. 17, R. S. C. are to be laid before Parliament, but *not before they come into operation.*

See also J. A. 1881, s. 19 (n.), p. 496.

(5.) This section shall not apply to Scotland.

(6.) In the case of any rules which it is proposed shall extend to Ireland, publication in the Dublin Gazette of the notice required by this section shall be requisite in addition to, or, if they extend to Ireland only, in lieu of, publication in the London Gazette.

Provisional rules in certain cases.

2. Where a rule-making authority certifies that on account of urgency or any special reason any rule should come into immediate operation, it shall be lawful for such authority to make any such rules to come into operation forthwith as provisional rules, but such provisional rules shall only continue in force until rules have been made in accordance with the foregoing provisions of this Act.

Printing, numbering, and sale of statutory rules.

3.—(1.) All statutory rules made after the thirty-first day of December next after the passing of this Act shall forthwith after they are made be sent to the Queen's Printer of Acts of Parliament, and shall, in accordance with regulations made by the Treasury, with the concurrence of the Lord Chancellor and the Speaker of the House of Commons, be numbered, and (save as provided by the regulations) printed, and sold by him.

(2.) Any statutory rules may, without prejudice to any other mode of citation, be cited by the number so given as above mentioned and the calendar year.

(3.) Where any statutory rules are required by any Act to be published or notified in the London, Edinburgh, or Dublin Gazette, a notice in the Gazette of the rules having been made, and of the place where copies of them can be purchased, shall be sufficient compliance with the said requirement.

(4.) Regulations under this section may provide for the different treatment of statutory rules which are of the nature of public Acts, and of those which are of the nature of local and personal or private Acts ; and may determine the classes of cases in which the exercise of a statutory power by any rule-making authority constitutes or does not constitute the making of a statutory rule within the

meaning of this section, and may provide for the exemption from this section of any such classes.

(5.) In the making of such regulations, each Government department concerned shall be consulted, and due regard had to the views of that department.

Definitions.

4. In this Act—

"Statutory rules" means rules, regulations, or bye-laws made under any Act of Parliament which (*a*) relate to any court in the United Kingdom, or to the procedure, practice, costs, or fees therein, or to any fees or matters applying generally throughout England, Scotland, or Ireland; or (*b*) are made by Her Majesty in Council, the Judicial Committee, the Treasury, the Lord Chancellor of Great Britain, or the Lord Lieutenant or the Lord Chancellor of Ireland, or a Secretary of State, the Admiralty, the Board of Trade, the Local Government Board for England or Ireland, the Chief Secretary for Ireland, or any other Government Department.

"Rule-making authority" includes every authority authorised to make any statutory rules.

Short title.

5. This Act may be cited as the Rules Publication Act, 1893.

VEXATIOUS ACTIONS ACT, 1896.

(59 & 60 VICT. c. 51.)

An Act to prevent abuse of the process of the High Court or other courts by the institution of vexatious legal proceedings. [14th August, 1896.]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Power of court to prohibit institution of action without leave.

1. It shall be lawful for the Attorney-General to apply to the High Court for an order under this Act, and if he satisfies the High Court that any person has habitually and persistently instituted vexatious legal proceedings without any reasonable ground for instituting such proceedings, whether in the High Court or in any inferior court, and whether against the same person or against different persons, the court may, after hearing such person or giving him an opportunity of being heard, after assigning counsel in case such person is unable on account of poverty to retain counsel, order that no legal proceedings shall be instituted by that person in the High Court or any other court, unless he obtains the leave of the High Court or some judge thereof, and satisfies the Court or judge that such legal proceeding is not an abuse of the process of the court, and that there is *primâ facie* ground for such proceeding. A copy of such order shall be published in the London Gazette.

See (n.) "Abuse of process," &c., p. 404; *Re Chaffers*, 45 W. R. 365 (C. A.). Cf. *Grepe* v. *Loam*, 37 C. D. 168; Seton, p. 344.

Extent and short title.

2.—(1.) This Act shall not extend to Scotland or Ireland.

(2.) This Act may be cited as the Vexatious Actions Act, 1896.

ARBITRATION ACT, 1889.

(52 & 53 VICT. c. 49.)

Arrangement of Sections.

References by Consent out of Court.

Sect.

1. Submission to be irrevocable, and to have effect as an order of Court.
2. Provisions implied in submissions.
3. Reference to official referee.
4. Power to stay proceedings where there is a submission.
5. Power for the Court in certain cases to appoint an arbitrator umpire, or third arbitrator.
6. Power for parties in certain cases to supply vacancy.
7. Powers of arbitrators.
8. Witnesses may be summoned by subpœna.
9. Power to enlarge time for making award.
10. Power to remit award.
11. Power to set aside award.
12. Enforcing award.

References under Order of Court.

A. For Inquiry and Report.

13. Reference for report.

B. For Trial.

14. Power to refer in certain cases.
15. Powers and remuneration of referees and arbitrators.
16. Court to have powers as in references by consent.
17. Court of Appeal to have powers of Court.

General.

18. Power to compel attendance of witness in any part of the United Kingdom, and to order habeas corpus to issue.
19. Statement of case pending arbitration.
20. Costs (see also Sec. 2).
21. Exercise of powers by masters and other officers.
22. Penalty for perjury.
23. Crown to be bound.
24. Application of Act to references under statutory powers.
25. Saving for pending arbitrations.
26. Repeal.
27. Definitions.
28. Extent.
29. Commencement.
30. Short title.

SCHEDULES.

Arb. Act, 1889.

An Act for amending and consolidating the enactments relating to arbitration. [26th August, 1889.]

THE Arbitration Act, 1889, which commenced and came into operation on the 1st day of January, 1890, repeals from that date the following enactments :—

9 Will. 3. c. 15 .	The whole Act.
3 & 4 Will. 4, c. 42 .	Sections 39 to 41, both inclusive.
The C. L. P. Act, 1854	Sections 3 to 17, both inclusive.
Judicature Act, 1873 .	Section 56 in part. For portion retained see *ante*, p. 438; and sections 57 to 59, both inclusive.
Judicature Act, 1884 .	Sections 9 to 11, both inclusive.

Arb. Act, 1889, s. 1.

General Application of Act.—This Act provides an express code as to proceedings in all arbitrations, and its application to arbitrations under previous statutes is only excluded where its provisions are absolutely inconsistent with the former Act. See *Re Knight and Tabernacle Permt. Bldg. Soey.*, 39 W. R. 507, cited *infra*, s. 19 (n.), and generally see s. 24 and (nn.). It is not merely a consolidation Act; it is an amending Act. (*Hurlbatt* v. *Barnett*, (1893) 1 Q. B. 77.) See the rule of construction laid down in *Hodgson* v. *Bell*, 24 Q. B. D., at p. 305.

Repeals.—See the Second Schedule, *infra*, p. 563.

REFERENCES BY CONSENT OUT OF COURT.

Arbitration under Submission.

Submission to be irrevocable, and to have effect as an order of Court.

1. A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the Court or a judge, and shall have the same effect in all respects as if it had been made an order of Court.

3 & 4 Will. 4, c. 42, s. 39; C. L. P. A., 1854, s. 17.

"A Submission."—(See also "Validity of Submission," *post*, p. 535.) Is a *written* agreement signed by both parties, or with proper authority by others on their behalf (see s. 27, *infra*, and note thereto. "Agreement"). The distinction between an arbitration and a valuation still holds good. The former is to settle a difference which has arisen between the parties, the latter is agreed upon to prevent any difference arising. Therefore where arbitrators were appointed to determine the "quantum" of compensation to be given for yielding up possession of a lease, it was held a mere valuation and not a submission hereunder. (*Re Hammond, &c., Arb.*, 62 L. T. 808; cf. *Re Hopper*, L. R. 2 Q. B. 367; *Re Carus-Wilson*, 18 Q. B. D. 7; *Re Dawdy*, 15 Q. B. D. 426.)

Who may Submit.—Every one capable of making a disposition or release of his right can make a submission to arbitration, but persons who cannot contract cannot submit. (Russell's Arb., 15.)

Terms of Submission.—If it is intended that the parties to a submission are to be deprived of any legal right they may have the submission should so state. See *Green and Balfour's Arb.*, 63 L. T. 97, 325. Thus it was held that a submission to arbitration did not debar a party thereto from raising as a defence the Statute of Limitations. (*Re Astley, &c., Co. and Tyldesley Coal Co. Arb.*, 80 L. T. 116. It is open to parties to agree that neither party will try to set aside the award for fraud. (*Tullis* v. *Jacson*, (1892) 3 Ch. 441.)

There is nothing to prevent the question whether or not there shall be a dissolution of partnership from being submitted to arbitration, but where this is done the court has full discretion to decide whether under the circumstances of the case the question is one which ought or ought not to be left to an arbitrator. A clause in partnership articles referring all matters in difference between partners to arbitration is sufficient to include the question of dissolution, and an arbitrator acting thereunder is empowered to decide whether or not the partnership shall be dissolved. (*Walmsley* v. *White*, 40 W. R. 675; *Vawdrey* v. *Simpson*, (1896) 1 Ch. 166; *Joplin* v. *Postlethwaite*, 61 L. T. 629; *Turnell* v. *Sanderson*, 60 L. J. Ch. 703; *Russell* v. *R.*, 14 C. D. 471.)

Arb. Act, 1889, s. 1.

The parties must manifestly intend to be concluded by the decision of the person called in, in order to clothe him with the authority of an arbitrator (Russell's Arb., 41.) Where this is clear a mere agreement to refer "all disputes" is good. (*Re Hohenzollern*, 54 L. T. 596.)

See further, as to terms of submission, s. 2, *infra*, (n.) "Contrary intention."

As to parol submissions prior to this Act, see Russell's Arb., 52, and *Re Newton and Hetherington*, 19 C. B., N. S. 342; *Re Wilcox and Storkey*, L. R. 1 C. P. 671; *Wadsworth* v. *Smith*, L. R. 6 Q. B. 332.

As to amending a submission, cf. *Vanderbyl* v. *McKenna*, L. R. 3 C. P. 252; and as to effect of a clause providing that there should be no appeal from the decision of the arbitrator, see *Wadsworth* v. *Smith*, L. R. 6 Q. B. 332.

Submission under Lands Clauses Consolidation Act, 1845.—As to submissions to arbitration hereunder, see *Re Harper and Great Eastern Ry.*, L. R. 20 Eq. 39; *Bidder* v. *Staffordshire Ry. Co.*, 4 Q. B. D. 412.

"**Irrevocable, except by leave.**"—"The only effect of the section is that a submission is to be irrevocable in the sense in which that phrase was used before the Act, and is to have the same effect in all respects as if before the Act it had been made a rule of Court." *Per* Esher, M.R., *Re Smith and Nelson's Arb.*, 25 Q. B. D., p. 550.

Conflict of Laws.—An agreement between a Scotchman and an Englishman contained an arbitration clause which was bad according to Scotch law, but good according to English law. Held, the intention of both parties to refer being clear, the arbitration clause was a good defence to an action in Scotland. (*Hamlyn & Co.* v. *Talisker Distillery Co.*, 71 L. T. 1.)

Before the Arb. Act.—Prior to this Act a submission which contained either a direct (3 & 4 Will. 4, c. 42, s. 39), or indirect (*Re Mitchell*, 21 Q. B. D. 408) agreement that it should be made a rule of Court was irrevocable except by leave. But in the absence of such an agreement, a submission to a particular arbitrator was revocable at any time (*R.* v. *Bardell*, 5 A. & E., p. 619). There was a distinction between an agreement to refer, and a submission to a particular arbitrator. The former was no more revocable than any other contract. The latter was revocable unless it was within 3 & 4 Will. 4, c. 42, s. 39 (*Randell* v. *Thompson*, 1 Q. B. D. 748; *Piercy* v. *Young*, 14 C. D. 200; *Moffatt* v. *Cornelius*, 26 W. R. 914; *Law* v. *Garrett*, 8 C. D. 26, and see remarks of L. C. in *Willesford* v. *Watson*, L. R. 8 Ch., p. 480; *Re Hohenzollern, &c.*, 54 L. T. 596; *Deutsche, &c.* v. *Briscoe*, 20 Q. B. D. 177), even though it had been made a rule of Court. (*Thomson* v. *Anderson*, L. R. 9 Eq. 523; *Re Rouse and Meier*, L. R. 6 C. P. 212; *Fraser* v. *Ehrensperger*, 12 Q. B. D. 310.)

Since the Arb. Act.—The words "irrevocable except by leave" mean that *when the arbitrator is appointed* his authority cannot be revoked. This Act does not confer jurisdiction on the Court to order a party to a submission to appoint an arbitrator, unless the terms of the submission bring it within ss. 5 or 6 of the Act. See *Re Smith and Nelson's Arb.*, 25 Q. B. D. 545, cited s. 5 (n.), *infra*, p. 541, and *Re Emerson and Secretary of State for War Arbn.*, 9 Times Rep. 470.

Leave to revoke.—As to the circumstances under which the Court would, prior to this Act, allow a submission to be revoked, see *James* v. *Attwood*, 7 Scott, 841; *Clarke* v. *Stocken*, 3 Scott, 90; *Scott* v. *Vansandau*, 1 Q. B. 102; *Hart* v. *Duke*, 32 L. J. Q. B. 55; *Wilson* v. *Morrell*, 15 C. B. 720; and cf. *Re Corp. of Wakefield*, 4 Times Rep. 561; *E. & W. India Docks* v. *Kirk*, 12 App. Cas. 738; *James* v. *James*, 23 Q. B. D. 12 (C. A.); and cf. *Farrar* v. *Cooper*, 44 C. D. 323.

Where an arbitrator had wrongly admitted evidence which should have been rejected, the submission was revoked. (*Re Lord Gerard and L. & N. W. Ry. Arbn.*, (1894) 2 Q. B. 915, (1895) 1 Q. B. 459.)

Where circumstances have made the arbitrator an interested party (*e.g.*, litigation between the arbitrator and one of the parties) leave

to revoke will be given (*Re Baring Bros. & Co. and Doulton & Co.*, 61 L. J. Q. B. 704), but it must be clearly shown that he is so directly interested as to make it clear that he is unfit to arbitrate. Where, for example, a contract for works contained an agreement to refer all disputes between the contractors and the corporation to the corporation's engineer, leave to revoke was refused, although the engineer was indirectly an interested party. (*Re Donkin and Leeds Canal Co. Arb.*, 9 Times Rep. 192.) But in those cases the submission contained an agreement to refer to the particular arbitrator named. In the absence of such an agreement if an arbitrator who, from his position, is an interested person, be appointed, the Court will require a disinterested person to be substituted on penalty of having the submission revoked. (*Re Frankenberg and The Security Co. Arbn.*, 10 Times Rep. 393.)

An application for leave to revoke unless the other side consented to join in a commission to take evidence abroad was refused. (*Re Dreyfus and Paul Arbn.*, 9 Times Rep. 358.)

Appeal from refusal to grant leave to revoke.—This is an appeal within J. A. 1894, s. 1 (4), and must therefore be made direct to the C. A. (*Re Portland District Council and Tilley Arb.*, (1896) 2 Q. B. 98.)

Public Health Act, 1875.—An arbitration under ss. 16 and 308 of this Act is by s. 180 deemed to be a submission. But when the public authority after appointment of arbitrators and before the work is commenced decides not to proceed with the work, the arbitration is at an end, and no award can be made for expenses and costs incurred by the owner. The submission is limited to damage by actual work, and does not cover intended work. (*Davis* v. *Witney Urban District Council*, 15 Times Rep. 275.)

"**Court or a Judge.**"—Or a Master, O. 54. r. 12, and see s. 11 (n.).

"**Same Effect as an Order of the Court.**"—A submission can no longer be made a rule of Court. Nor does this section make an arbitration under submission a proceeding in the Court so that a commission to examine witnesses abroad can be ordered therein, under O. 37. r. 5. (*Re Shaw and Ronaldson Arbn.*, (1892) 1 Q. B. 91.) Nor does it give the Court power to make an order to compel a party to the submission to nominate an arbitrator, see *Re Smith and Nelson's Arb.*, cited s. 5 (n.), *infra*, p. 541.

Effect of Submission Clause on Contract.—In a Scotch case the House of Lords held that an insurance policy agreeing in case of fire to pay the amount of damage subject to arbitration, was a contract to pay the sum ascertained by arbitration, and that an action would not lie until the amount had been so ascertained. (*Caledonian Insurance Co.* v. *Gilmour*, (1893) A. C. 85; and see *Scott* v. *Avery*, 5 H. L. Cas. 811.)

Provisions implied in submissions.

2. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the first schedule to this Act, so far as they are applicable to the reference under the submission.

"**A Submission.**"—(See this (n.), s. 1, *supra*.) The word submission in this section refers to all submissions, whether made prior or subsequent to the Act; so that the following provisions must by virtue of s. 25, *infra*, be read into submissions made prior to the Act unless a contrary intention is therein expressed. (*Re Williams and Stepney Arbn.*, (1891) 2 Q. B. 257; and see *Re Wilson & Son and Eastern Counties Navigation Co. Arbn.*, (1892) 1 Q. B. 81.)

Waiver by Submission.—Plaintiff claimed as mortgagee in possession or injunction or damages for injury to premises. The defendant company and the plaintiff agreed to arbitrate. Although the plaintiff's claim was insufficient, an objection to it on that account was held to be waived by submission to arbitration. (*Lovering* v. *City of London, &c., Subway Co.*, 7 Times Rep. 600.)

Arb. Act, 1889, s. 2.

"**Contrary Intention.**"—If parties wish to guard against the arbitrator fixing his own rate of remuneration in his award under provision (i), *infra*, they must insert in the submission express terms to that effect. (*Re Stephens & Co. and Liverpool, &c., Globe Insce. Co. Arbn.*, 36 Sol. Jo. 464.)

"**The provisions . . . in the First Schedule.**"—These are as follows:—

(a.) If no other mode of reference is provided, the reference shall be to a single arbitrator.

See s. 5, and as to the powers of arbitrators, s. 7.

(b.) If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

See s. 6.

"**May Appoint.**"—Under the repealed provision, C. L. P. Act, 1854, s. 14, which was in the same terms, it was held that the arbitrators were bound to exercise some judgment in appointing the umpire. Thus where the appointment was made by lot merely it was held bad (*Re Cassell*, 9 B. & C. 624; *European, &c., Co.* v. *Croshey*, 8 C. B., N. S. 397); but where the arbitrators having agreed as to the fitness of two persons, selected one of the two by lot, the appointment was held to be valid (*Re Hopper's Arb.*, L. R. 2 Q. B. 367). *Secus*, where the arbitrator so chosen was not known to be a fit person by *both* arbitrators, but only by one (*Pescod* v. *P.*, 58 L. T. 76).

As to refusal or neglect to appoint an umpire under L. C. C. Act, 1845, see *Shepherd* v. *Corporation of Norwich*, 30 C. D. 553. As to misconduct of umpire, see *Wright* v. *Howson*, 4 Times Rep. 387, and s. 11, *infra*.

Three Arbitrators.—See this (n.). s. 5, *infra*.

(c.) The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award.

From C. L. P. Act, 1854, s. 15.

Semble, the word "arbitrators" in this and the following clauses includes a single arbitrator where the submission either provides for reference to a single arbitrator, or makes no provision as to the mode of reference (see (a) *supra*).

"**Within Three Months.**"—The three months after "entering on the reference, or after being called on to act," commences to run from the time of performing or being called upon to perform any necessary preliminary, or specific act connected with the arbitration, such, for example, as appointing an umpire. (*Re Baring Gould and Sharpington Pick, &c., Syndicate*, (1899) 2 Ch. 80.) An arbitrator enters on the reference when he enters into the matter of the reference either with both parties before him, or under peremptory appointment enabling him to proceed *ex parte*. (*Baker* v. *Stephens*, L. R. 2 Q. B. 523.)

Whether taking up an award known to have been made after the expiration of the limited time is a waiver of the condition as to time, *quære*; see *Darnley* v. *L. C. & D. Ry. Co.*, 2 L. R. H. L. 43.

"**Enlarge the Time.**"—(See also s. 9, *infra*.) The Court may enlarge the time, whether the time for making the award has expired or not (s. 9, *infra*). An order enlarging the time is for one month, unless otherwise expressed (O. 64. r. 14A).

The Court has enlarged the time after the award has been made. (*Lord* v. *Lee*, L. R. 3 Q. B. 404; *Denton* v. *Strong*, L. R. 9 Q. B. 117; *May* v. *Harcourt*, 13 Q. B. D. 688; *Re Warner and Powell*, L. R. 3 Eq. 261.)

Arb. Act, 1889, s. 2.

(d.) If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission, or to the umpire a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

C. L. P. Act, 1854. s. 15.

"**Extended time.**"—See (e), *infra*, and s. 9.

(e.) The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award.

As to enlarging time, see (c), *supra*, and s. 9, *infra*.

(f.) The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire, all books, deeds, papers, accounts, writings, and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.

See ss. 7, 8, 18, *infra*, and O. 36, rr. 48–55*a*.

(g.) The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath or affirmation.

Powers of Arbitrators.—See s. 7, *infra*.
Witnesses.—Ss. 8 and 18. O. 36, rr. 49, 50, 55*a*.

(h.) The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

Cf. s. 10 (1), (n.) "In all cases of reference."

"**Final.**"—And may be enforced under s. 12 (q.v.) as a judgment or order to the same effect. An originating summons under s. 12 for leave to issue execution is within Bankruptcy Act, 1890, s. 1, and therefore after leave obtained and execution issued on an award, a proper basis exists for bankruptcy proceedings. (*Ex p. Caucasian Trading Corpn.*, (1896) 1 Q. B. 368.)

"**And Binding.**"—See s. 12 as to enforcing. Where the parties to a contract referred the question of its construction to an arbitrator it was held that his award was conclusive evidence as to the construction in a subsequent action brought for other breaches of the same contract. (*Gueret* v. *Andony*, 62 L. J. Q. B. 633.)

(i.) The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

"**Costs.**"—An arbitrator, under a submission dated prior to this Act, has power hereunder to deal with the costs, unless the submission expresses a contrary intention. See *Re Williams and Stepney Arbn.*, (1891) 2 Q. B. 257, cited *supra;* and if no contrary stipulation is inserted in the submission, this power to deal with the costs extends to fixing the amount of his own fees, *if he does it in, and as part of*

Arb. Act, 1889, ss. 2—4.

his award, otherwise his charges may be taxed. (*Re Stephens & Co., and Liverpool, &c. Globe Insce. Co. Arbn.*, 36 Sol. J. 464; as distinguished by *Re Prebble and Robinson Arbn.*, (1892) 2 Q. B. 602. Power over costs of reference includes power over costs of the award. (*Walker* v. *Brown*, 9 Q. B. D. 434.)

Costs under Order of Reference.—See s. 20, *infra*.

Reference to official referee.

3. Where a submission provides that the reference shall be to an official referee, any official referee to whom application is made shall, subject to any order of the Court or a judge as to transfer or otherwise, hear and determine the matters agreed to be referred.

J. A. 1884, s. 11.

"**Official Referee.**"—See (n.) "Referees," *infra*, p. 549.

"**Any Official Referee, &c.** * * * **shall,**" **&c.**—This section seems to give the parties power to choose their own official referee, subject, &c. O. 36, rr. 45, 47, deals with cases in which *an order* of reference has been made, and such cases are distributed among the referees in rotation unless the order names a particular referee, see p. 549, *infra* (nn.), "Distribution of business among," and "Assignment to a particular Official Referee."

"**Transfer.**"—O. 36, r. 47B.

Power to stay proceedings where there is a submission.

4. If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any Court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that Court to stay the proceedings, and that Court or a judge thereof if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

C. L. P. Act, 1854, s. 11.

Practice.—*Application.*—The application is made by summons to a master or district registrar.

Who may apply.—It is not necessary that all the parties to the submission, other than the plaintiff in the action, should join in the application to stay. See *Willesford* v. *Watson*, L. R. 8 Ch. 473. It is doubtful whether the words "party to a submission, or any person claiming through or under him," apply to the trustee in bankruptcy of a party to a submission, whether as plaintiff or defendant to the action sought to be stayed. (*Pennell* v. *Walker*, 18 C. B. 651; *Piercy* v. *Young*, 14 C. D. 200.)

Counterclaims.—A defendant who is sued for a claim within the agreement to refer, and who, though unable to dispute the claim, has a *bonâ fide* counterclaim, also within the agreement to refer, is entitled to apply for a stay of the action. (*Russell* v. *Pellegrini*, 26 L. J. Q. B. 75.) Delivery of a counterclaim is a commencement of legal proceedings within the section which entitles the plaintiff in the action to apply for a stay hereunder if he has not taken any step in the action since the counterclaim was delivered. (*Chappell* v. *North*, (1891) 2 Q. B. 252).

Taking a step in the Action.—The application must be made before taking any other step in the action; so an application for security for costs was held to bar the defendant from obtaining a stay hereunder (*Adams* v. *Cattley*, 66 L. T. 687); so also the issue of a summons for

Arb. Act, 1889, s. 4.

particulars of counterclaim, see *Chappell* v. *North*, (1891) 2 Q. B. 252, cited *supra*, and see O. 70, r. 2, (n.) "Fresh step." After defence it is too late. (*West London, &c., Co.* v. *Abbott*, 29 W. R. 584.) Also after defendant has obtained time to plead and agreed to take short notice of trial. (*Smith* v. *British Marine*, W. N. (83) 176.) But where defendant gave notice demanding a statement of claim, that was held to be no step in the action (*Ives* v. *Willans*, (1894) 1 Ch. 68; affirmed 2 Ch. 478), and the same where defendant before defence wrote to plaintiff under O. 64, r. 8, for further time to plead and obtained it (*Brighton Marine, &c., Co.* v. *Woodhouse*, (1893) 2 Ch. 486); and where the defendant filed affidavits in the action in answer to the plaintiff's affidavits in support of a motion for a receiver, that was held to be no step in the action. (*Zalinoff* v. *Hammond*, (1898) 2 Ch. 92.) The distinction seems to be that negotiation or correspondence between parties or their solicitors does not constitute a step in the action, but an application by summons or motion does. See *Ives* v. *Willans*, *supra*, and *Bartlett* v. *Ford's Hotel Co.*, (1895) 1 Q. B. 850; affirmed by H. L., *Ford's Hotel Co.* v. *Bartlett*, (1896) A. C. 1. As to waiver of right to refer under Ry. Comp. Arb. Act, 1859, see *L. C. & D. Ry. Co.* v. *S. E. Ry. Co.*, 40 C. D. 100.

Affidavit in support of Stay.—The defendant must show by affidavit that he was at the time the proceedings were commenced, and still remains, willing to do all things necessary to the proper conduct of the arbitration: see the terms of this section, and *Piercy* v. *Young*, 14 C. D., at p. 209.

Onus of showing that Action should proceed.—Under the similar provisions of Railway Passengers Assce. Co.'s Act, 1864, s. 33, it was held that it rests on the plaintiff to show that the dispute ought not to be referred to arbitration. (*Hodgson* v. *Ry. Passengers Assce. Co.*, 9 Q. B. D. 188; and see *Vawdrey* v. *Simpson*, (1896) 1 Ch. 166.)

Costs.—The above section makes no provision as to the costs, but s. 20, *infra*, provides that any order made under this Act may be made on such terms as to costs as may be just.

Under the corresponding repealed provision (C. L. P. Act, 1854, s. 11) an order to stay was granted with no order as to costs. The reference terminated in favour of the plaintiff and an order was subsequently made ordering the defendant to pay the costs of the action which had been stayed. The order was upheld. (*Bustros* v. *Lenders*, 6 C. P. 259.) Section 2, *supra*, Sched. (i), gives the arbitrator discretion over the costs of the reference and award, but it does not give him power to deal with the costs of an action stayed hereunder in order to enable the reference to proceed.

Discretion of the Court.—The Court has a discretion hereunder, which it is bound to exercise. (*Re Carlisle*, 44 C. D. 200; *Lyon* v. *Johnson*, 40 C. D. 579; *Wallis* v. *Hirsch*, 1 C. B., N. S. 316; *Mason* v. *Haddan*, 6 C. B., N. S. 534; *Young* v. *Buckett*, 30 W. R. 511; *Workman* v. *Belfast Harbour Commissioners*, (1899) 2 I. R. 234.) But it is the *primâ facie* duty of the Court to act upon the agreement: see remarks of L.C. in *Willesford* v. *Watson*, L. R. 8 Ch., p. 480; and *Denton* v. *Legge*, 72 L. T. 626. And if the plaintiff cannot show some sufficient reason why the arbitration ought not to proceed, the Court will assume there is no such reason. (*Hodgson* v. *Ry. Passengers Assce. Co.*, 9 Q. B. D. 188.) As to right of owner to have amount of claim for paying expenses under Public Health Act, 1875, settled by arbitration, see *Sandgate Local Board* v. *Keene*, (1892) 1 Q. B. 831.

Validity of Submission.—In order to give the Court jurisdiction to exercise the power conferred by the section, there must be a subsisting agreement to refer capable of being enforced. (*Deutsche Springstoff, &c.* v. *Briscoe*, 20 Q. B. D. 177, following *Randell* v. *Thompson*, 1 Q. B. D. 748).

A submission which provides that under no circumstances shall the Court have anything to do with disputes arising under the contract is bad. But so long as the submission is limited to an agreement that

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arbitration shall be a condition precedent to the maintenance of an action, it is good, and it matters not in such a case whether it makes the ascertaining of *the amount*, or the ascertaining of *the liability* a condition precedent. (*Trainor* v. *Phœnix Fire Assce. Co.*, 65 L. T., p. 828; and see *Scott* v. *Avery*, 5 H. of L. Cas. 811; *Viney* v. *Bignold*, 20 Q. B. D. 172.) See 37 Sol. Jo., p. 613, and *Re Kenworthy and Sutton Arbitration*, there referred to.

An agreement that neither party will try to set aside the award for fraud does not invalidate a submission. (*Tullis* v. *Jacson*, (1892) 3 Ch. 441.)

If the only question is one of law, which if sent to the arbitrator ought, under s. 19, *infra*, to be referred back by him to the Court, the Court will not stay hereunder until the question of law has been tried. (*Re Carlisle*, 44 C. D. 200; and see *Lyon* v. *Johnson*, 40 C. D. 579.) See, however, *Randegger* v. *Holmes*, L. R. 1 C. P. 679.

The power to stay hereunder applies not only to a general agreement in a deed or instrument that all differences arising under it should be referred, but also to agreements to refer collateral to the deed or instrument under which the dispute arose. (*Randell* v. *Thompson*, 1 Q. B. D. 748, affirming *Mason* v. *Haddan*, 6 C. B., N. S. 526, overruling *Blyth* v. *Lafone*, 28 L. J. Q. B. 164.) See as to partnership, *Law* v. *Garrett*, 8 C. D. 26; and see *Wade-Grey* v. *Morrison*, 37 L. T. 270, cited *infra*, (n.) "Claim in Action duly comprised in Submission."

An agreement to refer all disputes to a foreign Court is within this section. (*Law* v. *Garrett*, 8 C. D. 26.)

The agreement must be one capable of being enforced, so where there was a general agreement to refer particular disputes to named arbitrators and the submission had been revoked (see s. 1, *supra*, (n.) "Irrevocable except by leave"), it was held that there was no power to stay. (*Deutsche, &c.* v. *Briscoe*, 20 Q. B. D. 177; *Randell* v. *Thompson*, 1 Q. B. D. 748.)

Dissolution of Partnership.—A clause in articles of partnership referring all matters in difference between the partners to arbitration is sufficient to empower the arbitrator to decide whether or not the partnership shall be dissolved, and on an application to stay hereunder the onus of showing that the case is not a fit one for arbitration is thrown on the person opposing the stay. The Court has full discretion to stay the action and allow the question of dissolution to go to the arbitrator or to refuse the stay. (*Vawdrey* v. *Simpson*, (1896) 1 Ch. 166; *Walmsley* v. *White*, 40 W. R. 675; *Joplin* v. *Postlethwaite*, 61 L. T. 629; *Turnell* v. *Sanderson*, 60 L. J. Ch. 703; *Russell* v. *R.*, 14 C. D. 471; *Barnes* v. *Youngs*, (1898) 1 Ch. 414.) In such a case where the question of return of premium was involved, Stirling, J., granted a stay, holding that if the arbitrators could award a dissolution, they could also decide what portion of the premium should be returned. (*Belfield* v. *Bourne*, (1894) 1 Ch. 521.) Where the partners agreed that "all disputes arising during or in the winding-up of the partnership should be referred," and one of the partners brought an action for appointment of a receiver, the action was stayed. (*Denton* v. *Legge*, 72 L. T. 626.)

Expulsion of a Partner.—In *Barnes* v. *Youngs*, (1898) 1 Ch. 414, Romer, J., refused a stay on the ground that in the circumstances of the case the question whether the notice of expulsion of a partner was valid was more suitable for decision by the Court than by an arbitrator.

All disputes that may arise."—This means "all disputes that may arise between the parties in consequence of this contract having been entered into." Such a submission is valid, and the Court will uphold it. (*Re Hohenzollern, &c., Arbn.*, 54 L. T. 596). And see *Wade-Grey* v. *Morrison*, 37 L. T. 270; cited *infra*, (n.) "Claim in Action duly comprised in Submission."

Railway Charges—"*Differences that may arise.*"—Cf. *L. & N. W. Ry.* v. *Donnellan*, (1898) 2 Q. B. 7; *Midland Ry. Co.* v. *Loseby*, 68 L. J. Q. B. 326. Cf. also *L. & N. W. and G. W. Rys.* v. *Billington*, (1899) A. C. 79, cited *infra*, p. 538.

Grounds for granting a Stay.—*Validity of Submission.*—(See also (n.) "Validity of Submission," *supra*.) A clause in a fire insurance policy stipulated that the company should not be liable if the amount claimed for was disputed, until after reference to arbitration; and that the award should be a condition precedent to any liability or any right of action against the company. Held, on the authority of *Scott* v. *Avery*, 5 H. L. Cas. 811, that the condition was valid. Action stayed. (*Trainor* v. *Phœnix Fire Insce. Co.*, 65 L. T. 825. See also *Baker* v. *Yorkshire, &c., Insce. Co.*, (1892) 1 Q. B. 144; *Kenworthy* v. *The Queen Insce. Co.*, 8 Times Rep. 211; *Scott* v. *Mercantile Accident, &c., Insce. Co.*, 66 L. T. 811; *Caledonian Insce. Co.* v. *Gilmour*, (1893) A. C. 85.)

Discretion of the Court.—See this (n.), *supra*.

Claim in Action duly comprised in Submission.—It does not matter whether the award is right or wrong so long as the matter adjudicated upon was duly comprised in the submission, and the arbitrator has not exceeded his jurisdiction. (*Re Hohenzollern, &c., Arbn.*, 54 L. T. 596.) A partnership deed for one year, which was afterwards extended by verbal agreement, contained an arbitration clause which, after several years, was held to be still in force, and stay granted. (*Gillett* v. *Thornton*, 44 L. J. Ch. 398.) And where a lease contained an agreement to refer to arbitration all matters of dispute arising under it, and a supplemental deed varied the lease in certain respects but left the proviso as to arbitration untouched, it was held that the two formed one agreement, and an action on the supplemental deed was stayed. (*Wade-Gery* v. *Morrison*, 37 L. T. 270.) A contract for service contained a clause empowering the employers to dismiss the servant for gross misconduct, and a further clause providing for arbitration in case of dispute. The employers dismissed the servant, who brought an action. The action was stayed and the case sent to arbitration, on the ground that the defendants were within their rights under the contract and were willing to go to arbitration. (*Renshaw* v. *Queen Anne Mansions, &c., Co.*, (1897) 1 Q. B. 662.)

Friendly Societies.—As to stay of action where the rules of a society provide for reference of disputes to arbitration under s. 22 of the Friendly Societies Act, 1875 (38 & 39 Vict. c. 60), see *Stone* v. *Liverpool Marine Soc.*, 63 L. J. Q. B. 471.

Building Societies.—See *Norton* v. *Counties Conservative, &c., Society*, (1895) 1 Q. B. 246.

Appointing Receiver and Staying Proceedings.—In a proper case the Court may grant a stay hereunder, while at the same time appointing a receiver. (*Compagnie du Senegal* v. *Smith*, 49 L. T. 527.) But will not do so if it will interfere with the proceedings before the tribunal chosen by the parties themselves. (*Law* v. *Garrett*, 8 C. D. 26.) In a partnership action plaintiff applied for receiver. Defendant applied for a stay hereunder. Stirling, J., appointed a receiver and stayed further proceedings with a view to the arbitration. (*Pini* v. *Roncoroni*, (1892) 1 Ch. 633.)

Grounds for refusing a Stay.—*Submission Invalid.*—See "Validity of Submission," *supra*, p. 535.

Discretion of the Court.—See this (n.), *supra*.

Claim in Action not comprised in Submission.—See *Nobel & Co.* v. *Stewart*, 6 Times Rep. 378. If the arbitration clause does not cover the whole subject of the action, the Court will not necessarily split up the action. (*Turnock* v. *Sartoris*, 43 C. D. 150; *Young* v. *Buckett*, 51 L. J. Ch. 504.) Where barley supplied under a contract containing an arbitration clause was admittedly not according to sample, and was returned by the buyer, the seller proceeded to arbitration. The buyer applied for and obtained an injunction restraining the arbitration. (*Sissons* v. *Oates*, 10 Times Rep. 392.)

Defence to Action going beyond Submission.—Where a clause in an insurance policy provided for arbitration "where a difference has arisen as to adjustment of a loss," and the defendant company applied for a stay

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on the ground that by storing petroleum on the premises the plaintiff had violated the contract and thus created a difference as to the adjustment of the loss, the Irish Court refused a stay, holding that the defendant had set up a defence against the right to recover at all under the contract, which went beyond the arbitration clause. (*O'Connor* v. *Norwich Union, &c., Co.*, (1894) 2 I. R. 723.) And where an arbitration clause in a private Act provided for arbitration as to reasonableness of charges, and on being sued for the amount charged the defendant denied the right of the plaintiff company to make any charge at all, it was held that there was no dispute within the arbitration clause and stay was refused. (*L. & N. W. and G. W. Rys.* v. *Billington*, (1899) A. C. 79.)

Charge of Fraud.—Where fraud is charged, and the *person charged with fraud* claims a public investigation, the Court will as a rule refuse to force him to arbitration by staying his action. (*Russell* v. *R.*, 14 C. D. 471.) But where the parties had agreed that the ascertainment by arbitration of the amount in dispute was to be a condition precedent to liability, the Court upheld the submission, though fraud was charged. In that case it followed that the party charged with fraud had no right to proceed by action. Until after arbitration there was no liability; until the liability was created there was no right of action; and until the right of action existed the issue as to fraud could not be said to exist either. (*Trainor* v. *Phœnix Fire Assce. Co.*, 65 L. T. 825.)

Delay.—Where the object of the defendant was merely to delay the plaintiff a stay was refused. (*Lucy* v. *Pearson*, 1 C. B., N. S. 639.)

Submission duly revoked.—Stay refused. (*Randell* v. *Thompson*, 1 Q. B. D. 748; *Deutsche, &c.* v. *Briscoe*, 20 Q. B. D. 177.) See s. 1, *supra*, (n.) "Irrevocable except by leave."

Breach of the Agreement to refer.—Where the defendant took the law into his own hands in a matter agreed to be referred a stay was refused, and it was held too late, after action brought, for defendant to restore the breach. (*Daris* v. *Starr*, 41 C. D. 242.)

Matters unsuitable for Arbitration.—The onus of showing this rests on the plaintiff. (*Hodgson* v. *Ry. Passengers Assce. Co.*, 9 Q. B. D. 188.) As to dissolution of partnership, see "Validity of Submission," *supra*, (n.) "Dissolution of Partnership," p. 536.

Arbitrator an Interested Party.—(See also (n.) "Injunction restraining Arbitration—Alleged Unfitness of agreed Arbitrator." *infra*.) This is sufficient ground for refusing a stay. (*Nuttall* v. *Mayor, &c., of Manchester*, 8 Times Rep. 513; and see *Beddow* v. *B.*, 9 C. D. 89; *Pickthal* v. *Merthyr Local Bd.*, 2 Times Rep. 805.) But if parties to a contract agree to submit disputes to an arbitrator, who from his position cannot possibly be a wholly unbiassed person, but must necessarily take part in disputes as they arise, the Court will not go out of its way to set the submission clause of the contract aside, unless it can be shown that the agreed arbitrator has done something to preclude himself from keeping his mind open. If the true construction of the contract is in dispute resort can be had, if necessary, to sec. 19. (*Jackson* v. *Barry Ry. Co.*, (1893) 1 Ch. 238, cited *infra*, (n.) "Alleged Unfitness of agreed Arbitrator"; and *Ives* v. *Willans*, there cited; and see *Re Haigh and L. & N. W. Ry., &c., Arbn.*, (1896) 1 Q. B. 649.) If it appears, however, that the arbitrator is so much interested that he would in effect be adjudicating on his own cause, the Court will refuse to support the arbitration. (*The City of Calcutta*, 79 L. T. 519, cited *infra*, (n.) "Alleged Unfitness of agreed Arbitrator.") The mere fact that the arbitrator prior to making his award has accepted the hospitality of one of the parties, although improper conduct in the circumstances, is not sufficient ground for setting aside the award on the ground of misconduct, in the absence of evidence of corrupt intention on the part of the party, or of the arbitrator having been influenced thereby. (*Re Hopper*, L. R. 2 Q. B. p. 374.)

Public Health Act.—For a case where an action by sanitary authority was dismissed on the ground that under s. 150 of the Public Health

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Act, 1875, the plaintiffs ought to have referred to arbitration, see *Folkestone Corpn.* v. *Brooks*, (1893) 3 Ch. 22.

Injunction restraining Arbitration.—See also O. 50, r. 6, Injunctions. (n.) "Arbitration." As to jurisdiction of the Court to grant an injunction restraining an arbitration, see *Beddow* v. *B.*, 9 C. D. 89; *Witt* v. *Corcoran*, L. R. 8 Ch. 476 (n.); *Law* v. *Garrett*, 8 C. D. 26.

There is no jurisdiction to grant an injunction restraining a party from proceeding with an arbitration in a matter beyond the agreement to refer (*North London Ry.* v. *G. N. Ry.*, 11 Q. B. D. 30), because such proceedings would be futile and of no binding effect. (*Farrar* v. *Cooper*, 44 C. D. 323; and see *Wood* v. *Lillies*, 61 L. J. Ch. 158.) But where an action is brought impeaching the agreement which contains the arbitration clause, there is jurisdiction to restrain the arbitration. This jurisdiction existed prior to the Judicature Acts, and has not been interfered with. (*Kitts* v. *Moore & Co.*, (1895) 1 Q. B. 253.) Such an application made without sufficient grounds was refused in *M'Harg* v. *Universal Stock Exchange*, 11 Times Rep. 409. Where the contract was admittedly not fulfilled on the terms agreed, and the defaulting party tried to go to arbitration to establish a claim, an injunction was granted restraining the arbitration. (*Sissons* v. *Oates*, 10 Times Rep. 392.) And where plaintiff contended that the document containing the submission was not the real contract between the parties, an injunction restraining the arbitration until the hearing was granted. (*Kitts* v. *Moore*, (1895) 1 Q. B. 253.)

An umpire irregularly appointed was restrained from acting in *Pescod* v. *P.*, 58 L. T. 76; and in *Beddow* v. *B.*, 9 C. D. 89, an arbitrator who was an interested party and incompetent was also restrained from acting. See also *Jackson* v. *Barry Ry. Co.*, (1893) 1 Ch. 238.

Alleged Unfitness of agreed Arbitrator.—A contract between a company and a contractor contained the ordinary clause that any dispute should be referred to the decision of the company's engineer. A dispute arose, and the engineer in a letter to the contractor expressed his opinion upon it. The company proceeded to arbitration, appointing the engineer as arbitrator according to the submission. The contractor brought an action. Kekewich, J., restrained the arbitration on the ground that the arbitrator had committed himself beforehand and had not kept an open mind. The C. A. (Smith, L.J., *diss.*) discharged the injunction on the ground that the engineer had only expressed his opinion as engineer, and that as the contractor had submitted by his contract to refer all disputes to the engineer, who would necessarily have to express his opinion on disputes as they arose, he must abide by his submission, which was part of the terms of his contract. (*Jackson* v. *Barry Ry. Co.*, (1893) 1 Ch. 238; followed in *Eckersley and Mersey Docks, &c., Arb.*, (1894) 2 Q. B. 667.) In order to upset an agreement to refer to an arbitrator who, from his position, is necessarily interested, the party must attack the character of the arbitrator to the extent of showing that he will not act fairly. (*Ives* v. *Willans*, (1894) 2 Ch. 478.) The mere fact that he will have to adjudicate on his own or his son's professional conduct is not sufficient to upset the agreement. (*Eckersley and Mersey Docks, &c., Arb., supra.*) The Court, however, does not approve of an arbitrator who from his position is necessarily interested, and in the absence of a direct agreement to refer to such an one, will not uphold his appointment. (*Re Frankenberg and the Security Comp. Arb.*, 10 Times Rep. 393.) Thus where there was a submission in a salvage agreement to the Committee of Lloyd's as arbitrators, and the agreement also gave Lloyd's power to object to the amount agreed to be paid, it was held that the arbitrators would be adjudicating on their own cause, and the Court refused to uphold the arbitration. (*The City of Calcutta*, 79 L. T. 517.)

Rescinding Arbitration under L. C. C. Act.—For a case where an application to set aside a reference under the Lands Clauses Consolidation Act, 1854, was refused, see *Re Chilworth, &c. Co., and Manchester Ship Canal Arbn.*, 8 Times Rep. 79.

Arb. Act, 1889, s. 5.

Power for the court in certain cases to appoint an arbitrator, umpire, or third arbitrator.

5. In any of the following cases :—

(*a.*) Where a submission provides that the reference shall be to a single arbitrator, and all the parties do not after differences have arisen concur in the appointment of an arbitrator :

"**Where a Submission provides.**"—(See definition of submission, s. 27, and s. 1 (n.)). If the submission *does not provide*, the reference is to a single arbitrator, s. 2 (n.) (*a*), and in such a case, if one of the parties to the submission refuses to concur in the appointment of an arbitrator, the terms of this section apply, and the Court will appoint; and, in fact, is bound to do so. (*Eyre* v. *Corpn. of Leicester*, (1892) 1 Q. B. 136.)

See (n.) following this section, "Where Submission Provides."

(*b.*) If an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy :

"**Refuses to act, or is incapable.**"—A submission agreed to refer to an arbitrator to be appointed by the Institute of Civil Engineers, and failing him, to some other person to be appointed by the same body. *W. M.* was appointed, and after making his award went abroad and thus became incapable of acting further. Subsequently a further dispute arose, and the Institute of Civil Engineers appointed *S.* as arbitrator, and it was held that the appointment of *S.* was valid. Held further, that though *S.* objected to act unless appointed by an order, he had not "refused to act" within this section, and that even if he had done so there was no power to make an appointment by order, the proper course being to apply to the Institute of Civil Engineers to appoint some other person. (*Re Wilson & Son and Eastern Counties Navigation Co. Arbn.*, (1892) 1 Q. B. 81; 8 Times Rep. 264.)

(*c.*) Where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him :

See s. 2, (n.) (*b*).

(*d.*) Where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy :

"**Incapable of acting.**"—See this (n.), *supra* (*b*).

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator.

If the appointment is not made within seven clear days after the service of the notice, the Court or a judge may, on application by the party who gave the notice, appoint an arbitrator, umpire, or third arbitrator, who shall have the like powers to act in the reference, and make an award as if he had been appointed by consent of all parties.

C. L. P. Act, 1854, s. 12.

The similar terms of the corresponding repealed section were held to apply to references under the Companies Clauses Act, 1845, and under

the Companies Act, 1862. (*Lord's Case*, 1 K. & J. 90 ; *Re Anglo-Italian Bank*, L. R. 2 Q. B. 452 ; *De Rosaz* v. *Anglo-Italian Bank*, 4 Q. B. 462.)

Three Arbitrators.—The precise effect of this section upon a reference under submission to three arbitrators, as distinguished from two arbitrators and an umpire, appears to be as follows :—

Submission between A. and B. to three arbitrators, one to be appointed by each party, and the third by the two appointed arbitrators : if either A. or B. refuses to appoint his arbitrator, there is no power to compel him to do so. (*Re Smith and Nelson Arb.*, 25 Q. B. D. 545.) If they both appoint, and the two arbitrators appointed do not appoint a third, or if a third arbitrator so appointed refuses to act or otherwise fails, then either A. or B. (or both) may give the arbitrators notice to appoint, and, failing compliance, may apply in chambers by originating summons for an order appointing the third arbitrator (sub-ss. (c) and (d), *supra*). If after appointment of all the arbitrators A.'s arbitrator refuses to act or otherwise fails, B. can give A. notice to appoint another. If B.'s arbitrator fails A. can do the same to B. If any notice to appoint so given is not complied with, the party giving it may apply in chambers by originating summons for the appointment by the court of a third arbitrator (sub-s. (d), *supra*).

Where a matter in dispute is referred to three arbitrators, as distinguished from two arbitrators and an umpire, all three must concur in the award. An award by two is bad. (*United Kingdom, &c., Assurance* v. *Houston*, (1896) 1 Q. B. 567.)

"**Where a submission provides.**"—(See definition of Submission, s. 27, and s. 1 (n.)). If the provisions in the submission are outside the limits of this and the following section the Court has no jurisdiction to interfere. It cannot compel a party to appoint his arbitrator, and it cannot apply this section to a case not provided for in it. (*Re Smith and Nelson Arbn.*, 25 Q. B. D. 545, *supra*.) Where a submission provided for the appointment of an arbitrator by the president of the Institute of Civil Engineers, and the arbitrator appointed went abroad, and a second arbitrator was appointed in his place, and the second arbitrator objected to act unless appointed by an order, the judge in Chambers made the order, which however the Divisional Court rescinded as made without jurisdiction. (*Re Wilson & Son and the Eastern Counties Narn. Co. Arbn.*, (1892) 1 Q. B. 81.) The C. A. upheld the Divisional Court, but refused to set aside the award of the second arbitrator, holding that though the order appointing him was bad, his appointment by the president of the Institute of Civil Engineers was a valid authority to act. (*S. C.*, 8 Times Rep. 264.)

Umpire.—Where a submission provided for reference according to the rules of a trade association and such rules provided for an appeal to the appeal committee of the association, the C. A. considered that the appeal committee was the umpire, and the case was therefore within the provisions of this Act. (*Re Keighley & Co. and Bryan & Co. Arb.*, (1893) 1 Q. B. 405.)

Death of Umpire.—Where an umpire died, and the parties agreed under s. 25 of the Lands Cl. Consol. Act, 1845, to appoint a sole arbitrator, and did so, it was held that there had not been a fresh reference to arbitration ; and the successful party was held entitled to the costs of the whole reference prior, as well as subsequent, to the appointment of the single arbitrator. (*Reg.* v. *Manley Smith*, 63 L. J. Q. B. 171.)

Death of Party before Arbitrator appointed.—P. and S. agreed to refer all disputes to arbitration, each party was to appoint an arbitrator on being called upon to do so, before arbitrators were appointed S. died, his executor refused to appoint an arbitrator, and on application to a judge at chambers he likewise refused to do so, and on appeal it was held that such refusal was right, as there had been no breach of the agreement to refer. (*Re An Arbitration*, 2 Times Rep. 150 ; cf. also *Re Smith and Nelson's Arb.*, *supra*.)

"**Notice to Appoint.**"—*Semble*, these words mean notice to appoint, or to concur in the appointment within seven days of an *acceptable*

Arb. Act, 1889, ss. 5—7.

arbitrator. Where the notice was not worded strictly in accordance with the section, though its meaning was clear, and the party receiving it refused to concur in the appointment of any arbitrator, the Court appointed one. (*Re Eyre and Corpn. of Leicester*, (1892) 1 Q. B. 136.) See also s. 6, *infra*, (n.) "The Court may set aside any appointment."

Application.—After the expiration of the seven days the party who gave the notice, and who wishes to proceed, should apply by summons before a master in chambers for the appointment to be made.

Workmen's Compensation Act, 1897.—This Act (60 & 61 Vict. c. 37), Sched. II. (4), provides that the Arbitration Act, 1889, shall not apply to arbitrations under the Act. Clause (7) of the same schedule provides that in the case of the death, or refusal, or inability to act, of an arbitrator appointed under the Act, a judge of the High Court at chambers may, on the application of any party, appoint a new arbitrator. Order 54, r. 1A of R. S. C., July, 1898, provides that such application shall be made by summons.

"**The Court * * * may.**"—The judge or master is bound to appoint an arbitrator in a case within the section if there is a submission within s. 27, *infra*, *q.v.* and (nn.). See *Aitken* v. *Batchelor*, 62 L. J. Q. B. 193, and *Re Eyre and Corpn. of Leicester*, *supra*.

Power for parties in certain cases to supply vacancy.

6. Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary intention—

(*a.*) If either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place;

(*b.*) If, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent:

Provided that the Court or a judge may set aside any appointment made in pursuance of this section.

C. L. P. Act, 1854, s. 13. Cf. s. 5 (nn.), *supra*.

This section does not apply to a reference to three arbitrators, one to be appointed by each of the parties, and the third by the two so appointed, though it would apply to a reference to two arbitrators and an umpire: see *Re Smith and Nelson Arb.*, 25 Q. B. D. 545; and *Gumm* v. *Hallett*, L. R. 14 Eq. 555, and see s. 5, *supra*, (n.) "Three Arbitrators." See also s. 2, (n.) (*b*).

"**The Court may set aside any Appointment.**"—An insurance company against burglary nominated their own manager to arbitrate under a policy containing an arbitration clause which left them to nominate the arbitrator. The Court held that such a proposal was monstrous, and gave them seven days to appoint another arbitrator, or in default ordered rescission of the submission. (*Re Frankenberg and The Security Comp. Arb.*, 10 Times Rep. 393.)

Powers of arbitrator.

7. The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power—

"**Power.**"—See O. 36, rr. 48—55*c*.

(*a.*) to administer oaths to or take the affirmation of the parties and witnesses appearing; and

See s. 2, *supra*, (nn.) (*f*) and (*g*), and s. 8, *infra*, and as to witness in Scotland or Ireland, s. 18, *infra*, and O. 37, r. 20 (n.).

(*b.*) to state an award as to the whole or part thereof in the form of a special case for the opinion of the Court; and

C. L. P. Act, 1854, s. 5.

"**Special Case.**"—(See s. 19, *infra*, and O. 34.) Under s. 19 the arbitrator or umpire acting under a submission may be compelled to state a special case, and a compulsory order may be made notwithstanding that the arbitrator has given no indication whatever as to what is his opinion on the point of law. (*Re Spillers and Baker, Ltd., and Leatham and Sons Arbn.*, (1897) 1 Q. B. 312.) An umpire appointed under the L. C. C. Act, 1845, had power to state a special case under the corresponding repealed section. (*Rhodes* v. *Airedale Commissioners*, 1 C. P. D., p. 402.) So also an arbitrator or umpire appointed under the Ry. Passengers Comp. Act, 1864. (*Isitt* v. *Ry. Passengers Assce. Co.*, 22 Q. B. D. 504.)

Costs.—By s. 20, *infra*, the Court has jurisdiction to deal with the costs. That section extends the jurisdiction of the Court over the costs in dealing with a special case within this section, both in the High Court and the C. A., and supersedes the provision as to costs in the L. C. C. Act, 1845, s. 34. The decision in *Re Holliday, &c., Arbn.* (20 Q. B. D. 699) no longer applies. (*Re Gouty and Manchester, &c., Ry. Arbn.*, (1896) 2 Q. B. 439.) Cf. *Portishead, &c., Co.* v. *Bristol, &c., Co.*, W. N. (87) 75.

Appeal.—An award stated hereunder in form of a special case exhausts the arbitrator's powers, and the decision of the Court determines the rights of the parties, and may (see J. A. 1894, s. 1 (b) (v), *ante*) be appealed from (*Re Knight and Tabernacle, &c., Arbn.*, (1892) 2 Q. B., p. 619, and see *Re Kirkleatham Local Bd., &c., Arbn.*, (1893) 1 Q. B. 375), as it could have been under s. 5 C. L. P. A. (*Bidder* v. *N. Staffordshire Ry. Co.*, 4 Q. B. D. 412; *Shubrook* v. *Tufnell*, 9 Q. B. D. 621.) See also s. 19, *infra*, (n.) "No appeal." (*Re M'Intosh and Pontypridd Improvement Co. Arbn.*, 61 L. J. Q. B. 164; *Page* v. *Kettering Waterworks Co.*, 8 Times Rep. 228.)

"**Practice.**"—See this (n.), p. 560.

(*c.*) to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Overruling *Mordue* v. *Palmer*, 23 L. T., p. 752. The power here given does not extend to making any material alteration in the finding of the arbitrator. See *Re Calvert and Isidore Wyler Arb.*, 106 L. T. Jo. 288, cited s. 10 (1) (n.), *infra*.

As to appeals generally, see J. A. 1873, s. 19.

Witnesses may be summoned by subpœna.

8. Any party to a submission may sue out a writ of *subpœna ad testificandum*, or a writ of *subpœna duces tecum*, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.

"**May sue out.**"—See as to general practice, O. 37, rr. 20, 26, and where the witnesses are in Scotland or Ireland, O. 37, r. 20 (n.), and s. 18, *infra*; and cf. s. 2 (n.) (*g*), s. 7; and O. 36, r. 49.

Arb. Act, 1889, ss. 8—10.

"**A Writ of Subpœna.**"—Issues at the Writ Dept., Central Office, as of course. See as to application of the practice to prior and subsequent enactments, O. 37, r. 20, (n.) "On an Arbitration."

Commission to Examine Witnesses Abroad.—This Act confers no jurisdiction on the Court to order a commission in an arbitration under submission. And where an application for leave to revoke was made, unless the opposite party consented to an order for commission, the application was refused. (*Re Dreyfus and Paul Arbn.*, 9 Times Rep. 358.)

Power to enlarge time for making award.

9. The time for making an award may from time to time be enlarged by order of the Court or a judge, whether the time for making the award has expired or not.

C. L. P. Act, 1854, s. 15.

See s. 2 (n.) (*e*); O. 64, r. 14A. And where award is remitted, see s. 10, s.s. 2.

"**The Time may be enlarged by Order.**"—The Court may enlarge the time after the award has been made. (*Lord* v. *Lee*, L. R. 3 Q. B. 404; *Denton* v. *Strong*, L. R. 9 Q. B. 117; *May* v. *Harcourt*, 13 Q. B. D. 688.) Where there had been great delay the Court refused to enlarge the time. (*Re Dare Valley Ry. Co.*, L. R. 4 Ch. 554.)

The Court has no power to enlarge the time where the arbitration is under the Public Health Act, 1875, s. 180, s.s. 9. (*Re Mackenzie*, 17 Q. B. D. 114; *Yeadon Ld. Bd.* v. *Yeadon, &c., Co.*, 41 C. D. 52.)

"**Court or a Judge.**"—Or a master, O. 54, r. 12A. And see s. 11, (n.) "The Court."

Power to remit award.

10.—(1.) In all cases of reference to arbitration the Court or a judge may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire.

C. L. P. Act, 1854, s. 8.

"**In all cases of reference.**"—The effect of this section is the same as the repealed section (C. L. P. A. 1854, s. 8), and in putting a construction upon it regard must be had to the decisions on the repealed section. "The effect of both these Acts is to treat all submissions to arbitration (whether made by consent or compulsorily) as though they contained a clause giving the Court power to refer back the award to the arbitrator or umpire." *Per* Esher, M.R., *Re Keighley & Co. and Durant & Co. Arb.*, (1893) 1 Q. B., p. 409. As to the extent to which this power will be exercised, see next note.

"**May remit the Matters Referred.**"—The principle adopted in applying this section is as follows:—

In the case of a compulsory reference to arbitration any party may appeal from the award on any question of law (O. 59, r. 3.)

Subject to that provision the general ruling holds good that an award is final; and, assuming that it is good on the face of it, there can be no appeal from it, unless there is corruption on the part of the arbitrator, or excess of jurisdiction, or where the arbitrator himself admits that there is a mistake, and, as it were, craves the assistance of the Court in setting it right. (*Dinn* v. *Blake*, L. R. 10 C. P., p. 391; see *Re Keighley & Co. and Bryan & Co. Arbn.*, (1893) 1 Q. B. 405; and *Hodgkinson* v. *Fernie*, 27 L. J. C. P. 66.) Where a reasonable and proper request is made to the arbitrator to state a case on a question of law under s. 19, and he refuses, that is misconduct and the award may be remitted. (*Re Palmer & Co. and Hosken & Co. Arbn.*, (1898) 1 Q. B. 131.) But the mere allegation after the award is made that the arbitrators have made a mistake in law is not sufficient ground for an order to remit. (*Re Montgomery & Co. and Liebenthal & Co. Arbn.*, 78 L. T. 406.) Where it appears that since the making of the award material evidence has been

discovered which might have affected the arbitrator's decision, the court may remit the award hereunder. (*Re Keighley & Co., &c., Arbn., supra, Burnard* v. *Wainwright*, 19 L. J. Q. B. 423, and *Sprague* v. *Allen*, 15 Times Rep. 150.)

In *Hooper* v. *Balfour*, 62 L. T. 646, the Court remitted an award because the arbitrator by introducing a new term into the award, had in effect made a new contract for the parties; and see *Re Green and Balfour*, 63 L. T. 97, 325. It refused to remit or vary in *Re McClean & Co. and Marcus*, 6 Times Rep. 355, on the ground that the authority given had not been exceeded, and also, on same ground, in *Brandt & Co.* v. *Boutcher*, 7 Times Rep. 140, where the arbitrators in estimating the amount of damage suffered by a purchaser of hides agreed to be supplied of an average weight, took into consideration the excessive proportion of light hides in addition to the deficiency in average weight.

The Court refused to remit a report to an official referee because it did not give the items of complicated accounts referred to him, but merely the balances found due. (*Re Taylor*, 44 C. D. 128.)

Mistake in Law.—In the case of a compulsory reference to arbitration any party may appeal from the award on any question of law (O. 59, r. 3).

Fresh Evidence.—See *Re Keighley & Co. and Bryan & Co. Arbn.*, (1893) 1 Q. B. 405, following *Burnard* v. *Wainwright*, 19 L. J. Q. B. 423, cited *supra*; *Sprague* v. *Allen*, 15 Times Rep. 150.

No Power in Arbitrator to alter Award.—Except as to a clerical error or mistake within s. 7, an arbitrator has no power to make any alteration in his award. Even where the Court in dismissing a motion to remit an award were of opinion that the arbitrator might open the award for the purpose of reconsidering his finding, and he acted in accordance with that opinion, it was subsequently held that he had no power to reconsider, or redetermine, or reopen the matters dealt with in his original award. (*Re Calvert and Isidore Wyler Arb.*, 106 L. T. Jo. 288.)

Workmen's Compensation Act, 1897.—*New Trial.*—A county court judge having acted as arbitrator under this Act has no power to entertain an application for a new trial. (*Mountain* v. *Parr*, (1899) 1 Q. B. 805.)

Application.—Must be made in a reasonable time, or the cause of the delay explained to the satisfaction of the Court. (*Leicester* v. *Grazebrook*, 40 L. T. 883: *Warburton* v. *Haslingden Ld. Bd.*, 48 L. J. C. P. 451: *Flynn* v. *Robertson*, L. R. 4 C. P. 324: *Re Dare Valley Ry. Co.*, L. R. 6 Eq. 429.)

(2.) Where an award is remitted, the arbitrators or umpire shall, unless the order otherwise directs, make their award within three months after the date of the order.

"**Enlargement of Time.**"—See s. 9, *supra*.

Power to set aside award.

11.—(1.) Where an arbitrator or umpire has misconducted himself, the Court may remove him.

(2.) Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court may set the award aside.

"**The Court.**"—It seems from the distinction made in the Act and the Rules between applications which are to be made to the "Court or a Judge" (see ss. 1, 3, 4, 5, 6, 9, 12, 13, 14, 15, 16, 17, 18, 19), and those which are to be made to "the Court" only, see s. 11, s.s. 1, 2; O. 36, rr. 52, 52*a*, 55, 55*a*, that the well-settled distinction between these expressions is retained, and that applications required by the Act or the Rules to be made to "the Court or a Judge" are to be by summons before a Master (O. 54, r. 12A), and that applications to "the Court" are to be by motion to a Judge in Ct. or to a Div. Court (O. 40, r. 6. See also Russell's Arbitration, 7 Ed. 653).

Arb. Act, 1889, ss. 11, 12.

"**Has misconducted.**"—As to misconduct of arbitrator, see also cases cited s. 4, *supra*, "Grounds for Granting a Stay." In an arbitration between a policy holder and an insurance office each party appointed an arbitrator, and these appointed an umpire. They sat together. The arbitrators differed, and the umpire awarded claimant 1.200*l*. It was discovered by the office that before the sittings held claimant had assigned his interest in the policy to his arbitrator. The Div. Ct. set aside the award. (*Blanchard* v. *Sun Fire Office*, 6 Times Rep. 365.) The fact that an arbitrator has asked for and obtained the assurance of one of the parties before him that he will take up the award in any event, is not an act of misconduct calculated to create bias. (*Re Kenworthy and Queen Insce. Co. Arbn.*, 9 Times Rep. 181.) An agreement that neither party will try to set aside the award for fraud does not invalidate a submission. (*Tullis* v. *Jacson*, (1892) 3 Ch. 441.) Where an arbitrator refused to alter the date of an arbitration as he was requested to do because the principal witness of one of the parties was leaving England prior to that date, an application to remove him was dismissed with costs. (*Re Whitwham and the Wrexham, &c., Ry. Co. Arbn.*, 39 Sol. Jo. 692.) It is not misconduct for an umpire who is a surveyor to give evidence, while the arbitration is pending, on the value of land which is similar in situation to the land on which he is called upon to decide as umpire. (*Re Haigh and L. & N. W. R. Arbn.*, (1896) 1 Q. B. 649.)

It is misconduct in an arbitrator if he refuses a reasonable and proper request to state a special case on a question of law under s. 19. (*Re Palmer & Co. and Hosken & Co. Arbn.*, (1898) 1 Q. B. 131.) Where arbitrators in good faith obtained from one of the parties in the absence but with the knowledge of the other correct information bearing upon the case, and everything was above-board and done for a reasonable and proper purpose, it was held that there had been no misconduct. (*Rolland* v. *Cassidy*, 13 App. Cas. 770.)

"**May set the Award aside.**"—Or, *semble*, may proceed by injunction, see (n.) "Injunction Restraining Arbitration," *supra*, p. 539.

If it can be shown that the arbitrator has failed to observe the fundamental rules of the administration of justice, *e.g.*, if he gave audience to one of the parties in the absence of the other, that is a good reason for setting aside the award. (*Re Gregson and Armstrong Arb.*, 70 L. T. 106; *The Warwick*, 15 P. D. 189; *Re Eitzen and Jewson Arbn.*, 40 Sol. Jo. 438.)

After an award had been made the unsuccessful party moved to set it aside on the ground that the arbitrator had admitted before witnesses that he had received a bribe, but he was not called to prove the fact. Held that the arbitrator's admission, not made on oath to the Court, could not operate as against the successful party to the arbitration, and application refused. (*Re Whiteley and Roberts Arbitration*, (1891) 1 Ch. 558.)

Friendly Societies Act, 1875.—The High Court does not by this Act derive any fresh jurisdiction so far as relates to setting aside an award made in an arbitration under the Friendly Societies Act, 1875. (*Re Golling's and The Tradesmen's Friendly Society Arbn.*, 64 L. T. 775.)

Where an award has been made under this Act the matter cannot be re-opened before the justices, although the award may perhaps be set aside if there has been misconduct on the part of the arbitrators. (*Bache* v. *Billingham*, (1894) 1 Q. B. 107.)

Enforcing award.

12. An award on a submission may, by leave of the Court or a judge, be enforced in the same manner as a judgment or order to the same effect.

This section, coupled with s. 1, *ante*, places a party seeking to enforce an award under submission in the same position as if before the Act the submission had been made a rule of Court under C. L. P. Act, 1854,

s. 17; except that under the terms of this section no judgment is necessary as the award can, by leave, be enforced as a judgment.

"**Award.**"—The award is final, s. 2 (n.) (*h*); but the court may remit it for reconsideration (s. 10); and see O. 36, rr. 52a, 55c.

"**Be enforced.**"—This may be done by leave at any time, though the time for setting the award aside has not expired. O. 42, r. 31A. The application is by summons before a Master. See P. M. R. (20), Vol. I., Part II. Cf. O. 52, rr. 2 and 4.

Recovery of Land.—Under the repealed section, C. L. P. Act, 1854, s. 16, special power was given to enforce an award under submission which gave a right to recovery of land. The words of this section are general and cover any award under submission.

"**In the same manner,**" &c.—See O. 36, rr. 50 and 55*c*; and as to enforcing judgment, see O. 42, rr. 1 to 7. These words are similar to those used O. 42, r. 24. An originating summons hereunder is a "civil proceeding" within Bankruptcy Act, 1890, s. 1, and a writ of execution issued thereunder is therefore a proper basis for bankruptcy proceedings. (*Ex p. Caucasian Trading Corporation*, (1896) 1 Q. B. 368.) The award cannot be prosecuted as a judgment under Judgments Extension Act, 1868.

Practice.—If the arbitrator has not taxed the costs given by his award (see s. 2, (*i*), *ante*), the party prosecuting the award may obtain taxation by a Master on production of the award before applying for leave to enforce it, or he may first obtain an order to enforce the award and tax afterwards.

Execution.—An application for leave to enforce an award under this section is made by originating summons under O. 54, r. 4 F., before a Master in Chambers. The summons should be intituled "In the matter of an arbitration between A. B. and C. D. And in the matter of the Arbitration Act, 1889." It should ask for "leave to enforce the award dated —— in the above arbitration in the same manner as a judgment or order to the same effect." The applicant must produce before the Master the original award (or a duplicate) and a copy thereof, together with an affidavit intituled as above, verifying both the original and copy award. The order is made in the terms of the summons and must be drawn up. On issuing execution the copy award must be filed (no fee) at the Writ, &c., Dept., Central Office, together with the order for leave to enforce it. A reference number will be given as a commencement of proceedings and the award will be marked with a seal to indicate that execution has been issued on it. All subsequent proceedings should bear the reference number. (See P. M. R. 20, Vol. I., Pt. II.)

Costs of Order to enforce Award.—The costs of the application for leave to enforce the award should be included in the order, and the certificate for such costs produced on issuing execution.

Lands Clauses Consolidation Act, 1845.—*Award.*—The mode of enforcing an award under that Act, where the basis of assessment was disputed was, and *semble* still is, by action. See *Lowther* v. *Caledonian Ry. Co.*, (1891) 3 Ch. 443; (1892) 1 Ch. 73, and cf. s. 24 and s. 27, *infra*, and (nn.).

The mode of enforcing the taking up of the award under this Act is by prerogative writ of *mandamus*. (*Reg.* v. *L. N. W. R.*, (1894) 2 Q. B. 512; and see *Reg.* v. *L. N. W. R.*, (1899) 1 Q. B. 921.)

Costs.—Costs are to be settled by the arbitrator and borne as provided by 8 & 9 Vict. c. 18, s. 34. By s. 35 of that Act it is provided that the arbitrators shall deliver their award to the promoters. In a case where the award was in favour of the landowner, he took up the award and paid the costs of arbitration. It was held that this was a voluntary act on his part, and that he could not recover the costs of arbitration from the promoters, either as costs of the proceedings or by action. (*Shrewsbury, Earl of* v. *Wirral Rys. Commtee.*, (1895) 2 Ch. 812.) Where a case of disputed compensation is settled by a jury, see, as to procedure,

Arb. Act, 1889, ss. 12, 13.

ss. 47—53 of that Act. In these cases, after taxation by a Master (sect. 52), the costs may be recovered by warrant of distress (sect. 53).

Public Health Act, 1875, s. 150.—Where a local body acting under this section goes to arbitration to settle the amount of an owner's liability the finding is not an award which can be enforced under this section of the Arbitration Act. (*Willesden Local Bd.* v. *Wright*, (1896) 2 Q. B. 412.)

Agricultural Holdings (England) Act, 1883.—An award under this Act (46 & 47 Vict. c. 61) may be enforced by leave under sect. 12 of the Arb. Act, in the same way as an ordinary award under submission. (*Re Lloyd*, (1899) 1 Q. B. 559.)

REFERENCES UNDER ORDER OF COURT.

(a.) Reference for Inquiry and Report.

Reference for inquiry and report.

13.—(1.) Subject to rules of Court and to any right to have particular cases tried by a jury, the Court or a judge may refer any question arising in any cause or matter (other than a criminal proceeding by the Crown) for inquiry or report to any official or special referee.

"**Subject to Rules of Court.**"—See R. S. C. Dec., 1889; O. 36, rr. 52*a*, 55*c*.

"**And to any right,**" **&c.**—Compare J. A. 1873, s. 56. See J. A. 1875, s. 22; O. 36, r. 6. (n.) "Right to Trial by Jury."

"**The Court or a Judge.**"—Or a Master, O. 54, r. 12A, and see s. 11, (n.) "The Court."

"**May refer.**"—See (n.) "Appeals from order of reference," *infra*, p. 557.

Scope of Section.—The above section is in effect a re-enactment of J. A. 1873, s. 56, *ante*, under which the reference was not for *trial*, but only for *inquiry and report*. And it might have been ordered in those cases which, prior to the J. A., could without any consent have been tried without a jury. In proper cases it might have been ordered before trial.

"**Any question arising.**"—The words "any question arising," &c., apply only to questions which must necessarily arise, and must certainly be decided in the cause or matter and not to questions which it might prove unnecessary to decide. (*Weed* v. *Ward*, 40 C. D. 555 (C. A.).)

Questions of Damages.—Should only be referred in C. D., when questions are of great detail. (*Wallis* v. *Sayes*, 6 Times Rep. 356.)

Procedure under the Section.—*Inquiry.*—The word "inquiry" signifies a judicial inquiry with witnesses, and is used because the inquiry is not to have the same result as a trial. (*Wenlock (Baroness)* v. *River Dee Co.*, 19 Q. B. D. 155.)

Accounts.—The referee is not bound to take accounts referred to him in the strict way usual in chambers in the C. D. although he may if he chooses. (*Re Taylor*, 44 C. D. 128.)

Report.—The report is addressed to the Court or judge by whom the matter was referred (Chitty Arch. 1581), and the Court may adopt, or partially adopt, or reject it as it thinks right. (*Wenlock (Baroness)* v. *River Dee Co.*, 19 Q. B. D. 155.) It should sufficiently set out the facts to enable the Court to form a judgment thereon. And in questions of account it should state what items are allowed and what disallowed, and not merely the result. (*Burrard* v. *Calisher*, 30 W. R. 321.)

But the referee is not bound to state the reasons for his findings on issues of fact unless required by the Court. *Per* Bramwell, L.J. (*Dunkirk Colliery Co.* v. *Lever*, 9 C. D., p. 28; *Miller* v. *Pilling*, 9 Q. B. D. 736; *Walker* v. *Bunkell*, 22 C. D. 722.)

Arb. Act, 1889, s. 13.

Adopting, Varying, or Remitting Report.—The report may be adopted wholly or partially by the Court or a judge, and if so adopted is equivalent to and may be enforced as a judgment of the Court, s.s. 2, *infra*. (*Wenlock (Baroness)* v. *River Dee Co.*, 19 Q. B. D. 155.)

The Court may differ from the referee as to any finding which is an inference from the facts reported. (*Longman* v. *East*, 3 C. P. D. 142.) And it may remit the matter back for further consideration (O. 36, rr. 52, 55c; *Wallis* v. *Sayers*, 6 Times Rep. 356).

When the report is made in a cause or matter, *the further consideration of which has been adjourned* (see O. 36, rr. 21, 39), any party may, on the hearing of the further consideration, without notice of motion or summons, apply to the Court or judge to adopt the report; or (after not less than four days' notice of motion to come on with the further consideration) to vary the report, or to remit the cause or matter, or any part thereof, for rehearing or further consideration to the same or any other referee (O. 36, rr. 54, 55*a*, 55*c*; cf. *Rust* v. *Victoria, &c., Co.*, 36 C. D. 113).

When the further consideration has *not* been adjourned, any party, by an eight days' notice of motion, may apply to the *Court* to adopt the report, or to vary or remit as above (O. 36, rr. 55, 55*a*, 55*c*).

For the practice as to confirmation, &c., of report before the Rules of 1883, see *Deacon* v. *Dolby*, 30 W. R. 317; *Walker* v. *Bunkell*, 22 C. D. 722; *Burrard* v. *Calisher* (2), 19 C. D. 644.

Where Report disposes of the Action.—When the effect of a report made under this section is to dispose of the whole action, the proper course is not to move for its adoption under O. 36, r. 55, but to set down a motion for judgment under O. 40, r. 7 (*Larkin* v. *Lloyd*, 64 L. T. 507), and see O. 40, r. 7, (n.) "Ordered to be Tried."

Order of Reference.—The order of reference should generally follow the form given in the appendix to the Rules of Dec., 1889, App. K, 32, 33a, Pt. I., *ante*, and should show on its face whether it was made under section 13 or 14 of the Arb. Act, 1889, and whether it is a reference of all or what issues. See *White* v. *Peto*, W. N. (86) 165; *Wenlock (Baroness)* v. *River Dee Co.*, 19 Q. B. D., p. 159.

Rules as to References.—New Rules under the Arb. Act, 1889, were issued in Dec., 1889, and Feb., 1892. See O. 36, r. 10, rr. 52*a*, 55*a*—55*c*; O. 40, rr. 2 and 6*a*; O. 42, r. 31*a*; O. 54, r. 12*a*; O. 57, rr. 16, 17; O. 61, r. 15*a*; O. 64, r. 14*a*.

Referees—"To any Official or Special Referee."—Referees and arbitrators under order of Court are to be deemed officers of the court, and shall have such authority as the rules prescribe, or (subject to the rules) as the Court or judge ordering the reference prescribes, Arb. Act, 1889, ss. 15, 21, *infra*, and see O. 36, rr. 48 to 55*c*.

Appointment of.—The official referees are appointed under J. A. 1873, s. 83.

Distribution of business among.—The business is distributed among them in rotation by the clerk to the senior official referee (O. 36, r. 45), the clerk endorses on the order of reference the name of the official referee to whom the business is to be referred, r. 46.

Assignment to a particular Official Referee.—When parties are agreed on any particular official referee, they can apply to have the name of such referee inserted in the order of reference, power being specially given by O. 36, r. 45, to refer the matter to a particular referee. Where this is done the usual practice is to make the order of reference in the form asked.

This order should then be taken to the clerk to the referee for an appointment.

The Court or judge has power to direct or transfer a reference to any one in particular of the official referees (O. 36, r. 47).

Subject to the order of the Court or a Judge or a Master (see O. 54, r. 12*a*) the referees seem to have the following powers:—

Trial.—The referee may hold the trial at or adjourn it to any place

Arb. Act, 1889, s. 13.

which he may deem most convenient, O. 36, r. 48, but *semble* this rule refers only to special, not official referees, see O. 36, r. 52*a*, but see r. 55*c*.

He can in proper cases give a peremptory appointment for the hearing, after which he may proceed *ex parte* in default of appearance of either party. (*Wenlock* v. *River Dee Co.*, 32 W. R. 220.) He is ordered to sit *de die in diem* (O. 36, r. 48; O. 63, r. 16; but this does not apply to an arbitrator acting under a submission, see O. 36, r. 55*c*); failure to comply with the direction to sit *de die in diem* is misconduct on the part of the arbitrator, but it is no ground for the unsuccessful party, after the reference is over, to move to set aside the award. (*Robinson* v. *R.*, 24 W. R. 675.) In case of misconduct by a special referee in this respect an application should be made in Chambers: Seton, 4th ed., 397.

Inspection and Evidence.—The referee or arbitrator may have any inspection or view either by himself or with his assessors, O. 36, r. 48. See *Barnett* v. *The Aldridge, &c., Co.*, 4 Times Rep. 16. Evidence shall be taken at any trial before a referee, and the attendance of witnesses may be enforced by subpœna (O. 36, rr. 49, 55*c*, and ss. 8, 18), and every such trial shall be conducted, as nearly as circumstances admit, as trials before a judge (O. 36, r. 49: *Wenlock* (*Baroness*) v. *River Dee Co.*, 19 Q. B. D. 155; ss. 7, 8, 15, 18).

Amending.—An official referee may add parties under O. 16, r. 11: *Byrne* v. *Brown*, 22 Q. B. D. 657; and see Form App. K., No. 33, Pt. I., *ante*.

Certifying.—See Form App. K., No. 33a, Pt. I., *ante*.

Discovery.—A referee or arbitrator has the same authority as a judge with respect to discovery and production of documents, O. 36, rr. 50, 55*c*; and see *Re Leigh*, 4 C. D. 661. This does not exclude the power of the Court to order inspection, &c., but the application must first be made to the referee. (*Macalpine* v. *Calder*, (1893) 1 Q. B. 545.) Cf. *Re Maplin Sands*, 71 L. T. 56, 594.

Conduct of Reference.—In the conduct of any reference or trial, he has the same authority as a judge and, where the case is referred to him for trial under s. 14, he is bound to direct judgment to be entered. See App. K. No. 33a, Pt. I., *ante*, O. 36, r. 50; O. 40, r. 2; and subject to the order of reference he has discretion as to costs, O. 36, r. 55*b*, and s. 20, *infra*; but he is not authorised to commit any person to prison or to enforce any order by attachment or otherwise, O. 36, rr. 51, 52*a*.

Stating Case.—The referee or arbitrator may before the conclusion of any trial before him or by his report or award submit any question for the decision of the court, or state any facts specially with power to the Court to draw inferences therefrom. In any such case the order to be made shall be entered as the court may direct. See ss. 7 (*b*), 19; O. 36, r. 52 (n.).

Furnishing reasons.—The Court has power to require any explanation or reasons from the referee. O. 36, rr. 52, 52*a*, 55*c*. See *Rust* v. *Victoria Graving Dock Co.*, 36 C. D. 113. If the referee is required to answer any question on his report he must be regarded as assisting the Court in a *quasi*-judicial capacity, and not as a witness. (*Broder* v. *Saillard*, 24 W. R. 456.)

Entering Judgment.—As to the power and duty of a referee to direct judgment in a cause or matter referred to him for trial under s. 14, *infra*, see (n.) "Judgment," p. 554.

Forms of Judgment.—See App. F., Nos. 8 and 9, Pt. I., *ante*.

Notice of Report.—When the report is made by a referee, he is on the same day to cause notice thereof to be given to all the parties to the trial or the reference before him by prepaid post-letter directed to the address for service of each party who shall in due course of post be deemed to have notice of such report (O. 36, rr. 53, 55*c*).

Fees.—The court fee on a reference before an official referee is 10*s*. for every hour; see the order as to Supreme Court fees, 1884, Nos

88—91, Pt. II., *ante;* see as to fee of special referee, (n.) "Fees," *infra*.

Directions of Lord Chancellor.—The L.C. directed (4 Feb., 1889) that all references of causes—other than those involving questions of costs, or questions of retainer—and all references to assess damages, except those under Writ of Inquiry, should in future be made to the Official Referees. References to assess damages under interlocutory judgment are still usually made to an official referee, but in some cases they are now made to a master. See O. 36, r. 57 (n.).

Sittings of Official Referee.—The hours of the official referees are from 10 a.m. to 4 p.m. on every day during the sittings, except Saturdays, when they sit from 10 a.m. to 1 p.m. They may also sit on days out of the sittings (O. 63, r. 16).

Special Referee.—See this (n.) s. 14, *infra*, p. 554.

Compulsory Reference for Inquiry and Report.—The wording of this section is different from that of s. 14, *infra*, as to the power of the Court to refer to a special referee, no agreement being here required as to such special referee. Under the similar wording of J. Act, 1873, s. 56, it was held that the Court could refer to a special referee for inquiry and report whether the parties liked it or not. (*Badische Anilin, &c.* v. *Levinstein*, 24 C. D., p. 167.)

Fees.—The remuneration to be paid a special referee or arbitrator shall be determined by the Court: s. 15, s.s. 3.

An arbitrator under submission may fix his own fees unless a contrary intention is expressed in the submission. See provision in 1st schedule (i) cited under sec. 2, *supra*, and (n.).

Appeals from Order of Reference.—See this (n.) *infra*, p. 557.

(2.) The report of an official or special referee may be adopted wholly or partially by the Court or a judge, and if so adopted may be enforced as a judgment or order to the same effect.

Reference for trial.

J. A. 1873, s. 56. See (nn.) to s.s. 1, *supra*.

"**May be adopted.**"—See O. 36, r. 55.

"**By the Court or a Judge,**" or a Master, O. 54, r. 12, and s. 11, (n.) "The Court."

"**And if so Adopted,**" **&c.**—This sub-section contains the same words as to adoption by the Court as were contained in the repealed section (J. A. 1873, s. 56), and a report hereunder requires adoption by the Court before effect can be given to it. (*Mansfield Union* v. *Wright*, 9 Q. B. D., p. 686.) The terms of s. 15 (2) *infra*, seem at first sight to imply otherwise, but see, as to this, s. 15 (2), (n.) "On any such reference."

"**May be enforced.**"—*Execution.*—As to issuing execution on a referee's report, see Execution Table, Vol. I., Pt. II.

Appeal.—See (nn.) "Appeals from order of reference," p. 557; "Appeal against Award or Certificate," p. 556, *infra*.

(b.) References for Trial.

14. In any cause or matter (other than a criminal proceeding by the Crown),—

Reference for trial.

(*a.*) If all the parties interested who are not under disability consent: or,

(*b.*) If the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the Court or a judge conveniently be made before a jury or conducted by the Court through its other ordinary officers: or,

Arb. Act, 1889, s. 14.

(c.) If the question in dispute consists wholly or in part of matters of account;

the Court or a judge may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before a special referee or arbitrator respectively agreed on by the parties, or before an official referee or officer of the Court.

J. A. 1873, s. 57: C. L. P. Act, 1854, ss. 3, 6; J. A. 1884, ss. 9, 10.

The power to an official referee to enter up judgment given by J. A. 1884, s. 9, is not repeated in this section, such power having been already given by O. 36, r. 50, and its exercise rendered obligatory by O. 40, r. 2. Cf. *Serle* v. *Fardell*, 44 C. D., p. 302; *Bannister* v. *McDonald*, W. N. (90) 50, and see (n.) "Judgment," *infra*, p. 554.

"**The Court or a Judge.**"—Or a Master, O. 54, r. 12A. And see (n.) "The Court," s. 11, *supra*.

"**May at any time order.**"—See (n.) "Appeals from order of reference," p. 557. O. 36, r. 7 (a), gives power to the Court or a judge, in every cause or matter, unless there has been an order under O. 36, r. 6, or a signification of desire under r. 2 for a trial with a jury, to order any cause, matter, or issue to be tried *inter alia* by an official referee or special referee, with or without assessors. The special referee must be agreed upon by the parties, see (n.) "Special Referee," *infra*.

Reference to a Particular Official Referee.—See s. 13 (1). (n.) "Assignment to a Particular Official Referee," *supra*, p. 549, and O. 36, r. 45 (n.).

For form of order of reference, see App. K., 33a, Pt. I., *ante*.

(a.) **Consent of Parties.**—If the case does not come within the clauses (b) and (c) of this section then it cannot be compulsorily referred for trial of the whole action without consent, though any issue or issues of fact may be referred for trial, and if all the questions in the action are questions of fact then they can all be compulsorily referred, and the official referee can give judgment on them. See *Dawes* v. *Fountaine*, 3 Times Rep. 347; *Longman* v. *East*, 3 C. P. D. 142; *Ward* v. *Pilley*, 5 Q. B. D. 427.

Right in certain Cases to Trial in Court.—If the case depends partly on questions of law and fact and partly on questions of account and scientific evidence, there is no power, except by consent, to refer it for trial to an official referee, with a direction in the order of reference that questions of law are to be stated for the Court. The plaintiff must first establish his legal right and then, if necessary, the judge at the trial can refer the questions of account (*semble* under s. 13, *supra*). (*Case* v. *Willis*, 8 Times Rep. 610; and see *Ormerod* v. *Todmorden, &c., Mill Co.*, 8 Q. B. D., p. 677.) Where it was not certain that a question of law would arise the case was referred with a direction to state a case under s. 19, *infra*, in case such a question did arise. (*Parks* v. *Eames*, W. N. (90) 143.)

Where a plaintiff sued on a contract for work to be done "to the satisfaction of (the defendant) and his architect," and in his reply alleged collusion between the defendant and his architect in refusing to express satisfaction with the work, it was held that such allegation amounted to a charge of fraud, and therefore plaintiff was not entitled to have the action referred to a special referee for trial in face of the defendant's claim to have it tried by a jury. (*Russell & Co.* v. *Harris*, 65 L. T. 752; and see *Leigh* v. *Brooks*, 5 C. D. 592, and *Dimmock* v. *Randall*, 5 Times Rep. 358.)

(b.) "**Prolonged Examination of Documents,**" **&c.**—"I am very much inclined to think that the prolonged examination of documents which is intended in this section is a prolonged examination of such documents as it is necessary to inquire into in order to enable the judge to leave the questions of fact." *Per* Brett, L.J., *Ormerod* v. *Todmorden*, 8 Q. B. D. 677. The "prolonged examination of documents"

means something more than reading a number of letters. (*Green* v. *Barrett*, W. N. (75) 204), or considering a long set of depositions taken on commission. (*Hamilton* v. *Merchants Marine Insurance Co.*, 58 L. J. Q. B. 544.)

Scientific or Local Investigation.—See *Saxby* v. *Gloucester Wagon Co.*, W. N. (80) 28.

(c.) "**Matters of Account.**"—A large construction was given to the word account in the repealed section (J. A. 1873, s. 57) (*Re Leigh*, 3 C. D. 292; *Hoch* v. *Boor*, 43 L. T. 425), and whenever the Court had jurisdiction to refer one matter of account, it might also refer other matters in the same action; see the judgment of Lord Esher in *Knight* v. *Coales*, 19 Q. B. D., at p. 302; *Ward* v. *Pilley*, 5 Q. B. D. 427; *Martin* v. *Fyfe*, 49 L. T. 107. If the matter in dispute consisted in part of matters of mere account the whole might have been referred. (*Browne* v. *Emerson*, 17 C. B. 361; *Reeve* v. *Chaffers*, 11 W. R. 307.) "If the court can see that part of the dispute between the parties is matter of account, that gives jurisdiction to refer the whole case." *Per* Esher, M.R., *Hurlbatt* v. *Barnett*, (1893) 1 Q. B. p. 79. But where there was a preliminary question as to the liability of the defendant to be decided before the question of account could arise there was no power to refer the action (*Clow* v. *Harper*, 3 Ex. D. 198, and see *Ward* v. *Pilley*, 5 Q. B. D. 427); and this ruling still holds good. (*Case* v. *Willis*, 8 Times Rep. 610.)

Discretion.—If the case is wholly a matter of mere account, or if it is in part a matter of mere account which cannot conveniently be tried in the ordinary way, then the combined effect of J. A. 1873, s. 57, and C. L. P. Act, 1854, s. 3, was to empower the Court to refer all the issues in the cause. (*Knight* v. *Coales*, 19 Q. B. D., p. 298.) This section expressly gives discretionary power to refer the whole action or any question or issue of fact. The Court will not readily interfere with the exercise of discretion by a judge in refusing an order of reference, even though he acted on insufficient knowledge of the facts of the case. (*Sheard* v. *Learoyd*, 2 Times Rep. 632.)

Charges of misconduct. *Sacker* v. *Bagazine*, 44 L. T. 308; fraud. *Hoch* v. *Boor*, 43 L. T. 425, and see *Imhof* v. *Sutton*, L. R. 2 C. P. 406; *Birmingham, &c.* v. *Ratcliffe*, L. R. 6 Ex. 224; wilful default. *Palmer* v. *Hardwick*, 63 L. T. 302; might also have been referred with questions of account, but when the party charged with fraud objected to the reference, and desired a trial by jury, a reference would rarely be ordered. (*Leigh* v. *Brooks*, 5 C. D. 592; *Dimmock* v. *Randall*, 5 Times Rep. 358; *Russell & Co.* v. *Harris*, 65 L. T. 752.) See however (n.) "Charge of Fraud," *supra*, p. 538.

"**Any question or issue of fact.**"—Questions of law and issues of fact were referred with direction to state special case under s. 19, if any question of law should arise. (*Parks* v. *Eames*, W. N. (90) 143.)

Damages and Costs.—The question of amount of damages to be paid is often referred to an official referee. (*Stafford* v. *Coxon*, 25 W. R. 788; *Dunkirk Colliery* v. *Lever*, 9 C. D. 20; and see as to the principle upon which damages should be referred, *Wallis* v. *Sayers*, 6 Times Rep. 356.) See O. 36, rr. 57 and 58, as to assessment of damages, and (n.) "Directions of Lord Chancellor," s. 13, *supra*, p. 551.

Application.—In Q. B. D. the application before trial is to a master in chambers on summons.

Authority of Referee.—See s. 15, *infra*, (n.) "Authority."

The Report of the Referee on a Trial.—By J. A. 1873, s. 58, the report of any referee upon any question of fact *on any trial* was (unless set aside by the court) to be equivalent to the verdict of a jury, see now s. 15 (2). It was held that the referee should find separately on each issue, and determine the questions of account and issues of fact referred to him, but that he need not set forth the evidence (*Longman* v. *East*, 3 C. P. D. 142), nor give his reasons for his findings. (*Miller* v. *Pilling*, 9 Q. B. D. 736; cf. *Proudfoot* v. *Hart*, 25 Q. B. D. 42.)

Arb. Act, 1889, s. 14.

If the referee is required to answer any questions on his report he can do so by way of explanation to the court, but being in a *quasi*-judicial position, he ought not to be called as a witness. (*Broder* v. *Saillard*, 24 W. R. 456.)

Judgment.—Subject to the order of the court or judge ordering the reference, an official or special referee, or officer of the court or arbitrator had and has the same powers to direct judgment to be entered for any or either party as a judge (O. 36. r. 50. r. 52*a*; O. 36. r. 55*c*. App. K. No. 33. Pt. I., *ante*). And after trial of the action he is bound to direct judgment to be entered. See O. 40. r. 2. and (n.).

Under O. 40, r. 9. no motion for judgment, except by leave, can be set down after the expiration of a year.

In signing judgment after trials by referees or arbitrators the practice is to require the production of the original award directing judgment. In the case of trial before an Official Referee an office copy of his Report (*i.e.* order for judgment) must be produced (the original being previously filed). A copy of the pleadings must be filed, and, if the time for judgment dates from service of a copy of the award, an affidavit of such service. When the referee has not directed judgment in his report or award, he should make a subsequent order for judgment, and on signing judgment such order must be filed together with the pleadings. See Judgment Table. Vol. I., Pt. II., and O. 40, r. 2 (n.).

For Forms of Judgment, see App. F., Nos. 8, 9, Pt. I., *ante*.

Reference by Consent of all Matters in Difference.—Such an order of reference derives its validity from the consent of the parties, and is not made under this Act. The award thereunder is final and cannot be set aside by motion under sec. 15. (*Darlington, &c., Wagon Co.* v. *Harding & Trouville Pier Co.*, (1891) 1 Q. B. 245.) A reference of "all matters in difference in the action" includes the counterclaim, if any. (*Weall* v. *James*, 68 L. T. 54.)

"**Special Referee.**"—O. 36. r. 7a, must be read with this section, and the combined effect of the two is to empower the Court to refer an action for trial compulsorily to an official referee if it comes within this section, but the Court has no power to refer a case compulsorily to a special referee if either party objects, because in the case of a special referee the section requires the agreement of parties. See *London, &c., Insce. Co.* v. *British America Assce. Co.*, 52 L. T. 385.

A special referee has the same powers and duties as an official referee. See s. 15, *infra*, and O. 36. rr. 48 to 55*c*.

Costs.—An order of reference may be made on such terms as to costs as the authority making it thinks just (s. 20, *infra*). In the absence of any such provision in the order of reference the official or special referee or arbitrator has full power to deal with the costs (O. 36. rr. 55*b*, 55*c*). Where a referee ordered "costs of the action and award" to be paid by the unsuccessful party, instead of following the usual form, "costs of action, reference and award," it was held that the costs of reference were included in the costs of action. (*Patten* v. *West of England Iron Co.*, (1894) 2 Q. B. 159.) Power over the "costs of reference" includes power to give costs of the award. (*Walker* v. *Brown*, 9 Q. B. D. 434.)

Order Silent as to Costs.—In such a case, if the referee does not deal with them, they follow the event by virtue of sec. 15 (2), *infra*. See *Carr Bros.* v. *Dougherty*, 67 L. J., Q. B. 371.

Event.—As to the meaning of "event" where costs follow the "event of the reference," see *Stevens* v. *Chapman*, 6 Ex. 213; *Dunhill* v. *Ford*, 3 C. P. 36; *Goutard* v. *Carr*, 13 Q. B. D. 598; *Lund* v. *Campbell*, 14 Q. B. D. 821; *Ahrbecker* v. *Frost*, 17 Q. B. D. 606; *Emmett* v. *Heyes*, 36 W. R. 237.

In *Hawke* v. *Brear*, 14 Q. B. D. 841, the costs of the cause, reference and award were to "abide event:" held the word event must be construed distributively, following *Ellis* v. *Desilva*, 6 Q. B. D. 521.

Amount Recovered not exceeding £50.—Where an action of contract had been referred hereunder, costs of action to "abide event," and the

Arb. Act, 1889, s. 14.

sum awarded to plaintiff did not exceed £50, a judge at chambers had jurisdiction to make an order under O. 65, r. 12. (*Hyde* v. *Beardsley*, 18 Q. B. D. 244.)

Where the arbitrator had not certified for costs under the County Courts Act, the Court had power to allow the plaintiff his costs or to refer the award back to the arbitrator that he might certify. (*Harland* v. *Mayor, &c., of Newcastle-upon-Tyne*, L. R. 5 Q. B. 47; but see *Bedwell* v. *Wood*, 2 Q. B. D. 626.) So far as these cases, however, assume that a referee or arbitrator has power to certify for costs under Cty. Cts. Act, they must now be read in the light of *Cox* v. *Hill*, 67 L. T. 26. Where costs are left to discretion of arbitrator, see *The Autothreptic, &c., Co.*, 21 Q. B. D. 182.

Report of Referee how questioned.—*Before Judgment entered.*—An application to set aside the findings of an official referee on a reference should be made by notice of motion, under O. 36, r. 52; and may be made at any time *before judgment*. (*Dyke* v. *Cannell*, 11 Q. B. D. 180; decided on O. 36, r. 34, of Mar. 1879, which was in the same words.) It was held in that case that *Sullivan* v. *Rivington*, 28 W. R. 372, was no authority that the time is limited to that for setting aside a verdict: followed, in *Bedborough* v. *Army & Navy Hotel Co.*, 50 L. T. 173; *Serle* v. *Fardell*, 44 C. D. 299. Where a referee tried preliminary issues and gave his findings, an application to set the findings aside was held to be premature: see *Lewis* v. *Walker*, 36 Sol. Jo. 110. In the Q. B. D. the application should be to the Divisional Court (*Cooke* v. *The Newcastle, &c., Co.*, 10 Q. B. D. 332); and *per* Lopes, J., at p. 160, in *Wenlock* (*Baroness*) v. *River Dee Co.*, 19 Q. B. D. 155; *Byrne* v. *Browne*, 37 W. R. 592; the report being by s. 58, J. A. 1873 (see now s. 15, s.s. 2), equivalent to the verdict of a jury. In the **C. D.** a motion to set aside the findings of a referee to whom the action had been referred *for trial* under this section would be to the C. A.; but a court of first instance could set aside the findings of a referee on a question referred to him for inquiry and report under section 13, *supra*. In **Q. B. D.** an application for a new trial of a case tried before an official referee must be made to a Divisional Court, and appeal lies from the Divisional Court to the C. A. without leave. (*Munday* v. *Norton*, (1892) 1 Q. B. 403.) J. A. 1890, s. 1, does not apply. (*Glashrook* v. *Owen*, 7 Times Rep. 62; *Gower* v. *Tibitt*, 39 W. R. 193.) The Report was open to appeal if improper evidence had been received by the referee, or if the finding was against the evidence. (*Longman* v. *East*, 3 C. P. D. 142.)

To enable the Court to decide whether the decision of the referee ought to be reviewed, an affidavit or some evidence of what took place at the trial had to be furnished to the court. (*Stubbs* v. *Boyle*, 2 Q. B. D. 124.) And see *Proudfoot* v. *Hart*, 25 Q. B. D. 42, where a statement made by the official referee before making his report seems to have been referred to.

A copy of the referee's notes should generally be produced. (Chitty, Arch. 1583.)

An arbitrator cannot be questioned on his finding. (*O'Rourke* v. *The Commissioner for Railways*, 15 App. Cas. 371.)

Where an award is in the express words of the reference, and the words are not ambiguous, the question whether the arbitrator understood the whole scope of his award cannot afterwards be raised. (*Re Highland Ry. and North of Scotland Ry. Arbn.*, W. N. (96) 77.)

After judgment entered.—Where at a trial by a referee he has directed that any judgment be entered, any party may move to set aside such judgment, and to enter any other judgment upon the ground that upon *the finding as entered*, the judgment is wrong, O. 40, rr. 6, 6A, and r. 10; and see *Palmer* v. *Hardwick*, 63 L. T. 302. In *Clark* v. *Sonnenschein*, 25 Q. B. D. 226, 464, a motion was made in Q. B. D. to set aside the findings and judgment of official referee. The Court held the judgment, upon the facts, was wrong, and (apparently under O. 40, rr. 6 and 10)

Arb. Act, 1889, s. 14.

ordered judgment to be entered for defendant. And it would seem from *Proudfoot* v. *Hart*, 25 Q. B. D. 42, that the principle of Law upon which the referee has proceeded may be challenged under such order (*i.e.*, O. 40, r. 6), although the point in that case would seem to have been a point of law, and therefore more properly raisable under O. 59, r. 3.

In the Q. B. D. such motion shall be made to a Divisional Court, O. 40, rr. 6, 6A. But in the C. D. the motion must be to the C. A. direct: *Serle* v. *Pardell*, 44 C. D. 299. See *Palmer* v. *Hardwick*, 63 L. T. 302; *Glasbrook* v. *Owen*, 7 Times Rep. 62; *Gower* v. *Tobitt*, 39 W. R. 193. Cf. (n.) "Appeal to the Court of Appeal," *infra*.

Appeal against Award or Certificate.—O. 59, r. 3, enables any party thereto when there has been a compulsory reference to arbitration (see ss. 13 and 14, *supra*, and cf. (n.) "Appeal to the Court of Appeal," *infra*) to appeal from the award or certificate of the arbitrator or umpire upon any *question of law*, and on the application of any party, the Court may set aside the award on any ground on which it might set aside the verdict of a jury. Or, it may remit all or any part of the matter in dispute to the arbitrator or referee, or make any order with respect to the award or certificate, or all or any of the matters in dispute that may be just. The appeal is to a Divisional Court, which has power not only to set aside such judgment but to enter any other in lieu thereof (*Clark* v. *Sonnenschein*, 25 Q. B. D. 226, 464, cited *supra*, cf. also O. 40, r. 10, (n.) "Motion for New Trial"); and, if the reference is a compulsory reference to arbitration as distinguished from a reference for trial under this section, its decision thereon would appear to be final, unless the Court hearing the appeal give leave to go to the Court of Appeal, for by J. A. 1884, s. 8 (*q. v.*, *ante*), it is enacted that the provisions of J. A. 1873, s. 45, are to apply to all appeals from any award or certificate of a referee or arbitrator where there has been a compulsory reference to arbitration in the Q. B. D. J. A. 1873, s. 45, provides that the determination by the Divisional Court of the appeals therein named shall be final, unless special leave to appeal be given by the Divisional Court by which the appeal is heard. This, however, only applies to a compulsory reference *to arbitration*, not *for trial*. (*Munday* v. *Norton*, *infra*.)

Measure of Damages.—In *Joyner* v. *Weeks* (1891), 2 Q. B. 31, on appeal from the decision of an official referee as to measure of damages allowed for breach of covenant to repair, the Divisional Court allowed the appeal and referred action back to the referee for trial. The C. A., however, gave judgment for the amount of damages claimed. See also *Gough* v. *Corpn. of Liverpool*, 64 L. T. 596; 65 L. T. 512, and *Gough* v. *Corpn. of Liverpool*, 8 Times Rep. 247, 323.

Housing of the Working Classes Act, 1890.—Leave to appeal against an award of compensation under this Act must be obtained from the Divisional Court or Judge in Chambers. There is no appeal. (*Ex p. Stevenson*, (1892) 1 Q. B. 394, 609.) As to grounds for giving leave, see *Re Housing of Working Classes Act*, 10 Times Rep. 225.

Application.—An application to set aside an award may be made at any time before the last day of the sittings next after such award has been made and published to the parties (see O. 64, r. 14, and *Re Gallop's, &c., Arb.*, cited in (n.) to that rule). The application is no longer made by rule *nisi*, but on notice of motion (O. 52, r. 2): which should state in general terms the grounds of the application (O. 52, r. 4). It is set down in Court Order Office room (468) and entered in list of opposed motions. When an affidavit is intended to be used it should be served with the notice of motion. O. 52, r. 4. If not so served, the Court may condone it as an irregularity under O. 70, r. 1. (*Wyggeston Hospital and Stephenson*, 33 W. R. 551.)

Appeal from Decision of Referee as to Conduct of Reference.—Where an official referee refused to postpone the hearing, it was held that an appeal lay to the Judge at Chambers. (*Richard* v. *Talbot*, 38 W. R. 478.) And where the referee refused to order the issue of a commission to examine witnesses abroad, and on appeal to the Judge in Chambers he

referred it to the Court, it was held that the referee had jurisdiction to make the order, and that the appeal from his decision must be heard by the Judge in Chambers. (*Hayward* v. *Mutual Reserve Fund Life Assocn.*, (1891) 2 Q. B. 236.)

Appeal to the Court of Appeal.—Where there has been a compulsory reference to *arbitration* the decision of the Divisional Court on appeal is final, and there is no appeal to the C. A. except by leave. See J. A. 1884. s. 8. But where an action is referred *for trial* compulsorily under this section. and O. 36. r. 7A, appeal lies from the Divisional Court to the C. A. without leave. (*Munday* v. *Norton*, (1892) 1 Q. B. 403.) As to appeals to C. A. from decision of H. Ct. on special case stated under ss. 7 and 19 respectively. see *Knight* v. *Tabernacle, &c., Arbn.*, (1892) 2 Q. B. 613, cited under those sections.

Appeals from Order of Reference.—See also (nn.) (a), (b), (c), pp. 552, 553, *supra*. The appeal against a compulsory order of reference by a judge at nisi prius, under J. A. 1873, s. 57, was to the C. A. direct; such a judge being a "court." (*Hoch* v. *Boor*, 49 L. J., Q. B. 665.)

It lay if the judge exceeded his powers and compulsorily referred questions of law under J. A. 1873. s. 57 (*Dawes* v. *Fountaine*, 3 Times Rep. 347); or, if the judge, having a discretion to compel a reference. in doing so exercised a manifestly wrong discretion which would work injustice (*Ormerod* v. *Todmorden Mill Co.*, 8 Q. B. D. 664; *Case* v. *Willis*, 8 Times Rep. 610); though his discretion would not, as a rule. be interfered with, *per* Thesiger, L.J., in *Hoch* v. *Boor*, 49 L. J., Q. B., at p. 667; *Knight* v. *Coales*, 19 Q. B. D. 296, and see *Sawby* v. *Gloucester Wagon Co.*, W. N. (80) 28. And his discretion to refuse an order of reference will not be overruled, unless in the interest of both parties. even if made without a full knowledge of the facts. (*Sheard* v. *Learoyd*, 2 Times Rep. 632.)

Compulsory reference to arbitration might have been ordered under C. L. P. Act, s. 3, by a judge after writ and before trial; or under s. 6, by a judge at a trial without a jury; or under J. A. 1884, s. 10, *ante*, which enabled a reference to an official referee.

Powers and remuneration of referees and arbitrators.

15.—(1.) In all cases of reference to an official or special referee or arbitrator under an order of the Court or a judge in any cause or matter, the official or special referee or arbitrator shall be deemed to be an officer of the Court, and shall have such authority, and shall conduct the reference in such manner, as may be prescribed by rules of Court, and subject thereto as the Court or a judge may direct.

J. A. 1873, s. 58; C. L. P. A. 1854. s. 7.

"All cases of Reference."—This probably means reference for trial, as well as reference for inquiry and report: *Palmer* v. *Hardwick*, W. N. (90) 162.

"Authority."—See notes to preceding section; O. 36, rr. 48—55, 55B, 55C; and see (n.) "Rules as to References," p. 549, *supra*.

Under the repealed section, C. L. P. A. 1854, s. 7, it was held that, although the referee could not delegate his authority, it was competent to him to inform his mind by sending a surveyor to report. (*Gray* v. *Wilson*, 1 C. P. 50.)

Conduct of Reference.—When an action is referred for trial under s. 14, *supra*, the terms of O. 36, r. 50, give the referee the same power as to discovery, production of documents, conduct of reference or trial, and judgment as a judge of the High Court. This does not take away from the court the power to order inspection, &c., but as it gives the referee concurrent jurisdiction applications of the kind must first be made to him and not to a judge. (*Macalpine* v. *Calder*, (1893) 1 Q. B. 545.)

"And subject thereto," &c.—As to power of Court to order official referee to suspend proceedings, see *Palmer* v. *Hardwick*, *supra*.

Arb. Act, 1889, ss. 15, 16.

(2.) The report or award of any official or special referee or arbitrator, on any such reference shall, unless set aside by the Court or a judge, be equivalent to the verdict of a jury.

J. A. 1873, s. 58.

"**On any such reference.**"—See *Palmer* v. *Hardwick*, *supra*. By J. A. 1873, s. 58, the report of a referee upon any "*trial*" was to be equivalent to the verdict of a jury. The terms of this sub-section seem to make *any* report or award, whether under s. 13 or s. 14, "equivalent, &c.," but probably the word "report" means here a report *after trial* under s. 14 (see J. A. 1873, s. 58), and not a report after an inquiry under s. 13, because sub-s. (2) of s. 13 provides otherwise. See also *Darlington Wagon, &c., Co.* v. *Harding & Trouville Pier, &c., Co.*, (1891) 1 Q. B. 245, cited *supra*. (n.) "Reference by consent." &c., p. 554.

"**Unless set aside by the Court or a Judge.**"—Seemingly a Master can now set aside the report or award. O. 54, r. 12A. Cf. *Cooke* v. *Newcastle, &c., Co.*, 10 Q. B. D. 332, and s. 11, (n.) "The Court." Where several actions had been referred to an official referee for trial under s. 14, and he ordered certain issues of fact to be first tried before himself and gave his decision on the issues, an application to set aside his findings on the issues was held to be premature, his report or award not having been made. (*Lewis* v. *Walker*, 36 Sol. Jo. 110.)

"**Equivalent to the Verdict of a Jury.**"—(See (n.) "Report of Referee, how questioned," p. 555). This does not mean that a case tried before an official referee is to be deemed to have been tried with a jury, but only that the report or award may be enforced as the verdict of a jury. (*Glasbrook* v. *Owen*, 7 Times Rep. 62.) In such a case, therefore, an application for a new trial must be made to a divisional court, and not to the C. A. (*Gower* v. *Tobitt*, 39 W. R. 193.) Cf. also *Clark* v. *Sonnenschein*, 25 Q. B. D. 464.

Costs.—Where an order of reference for trial under s. 14 is silent as to costs, and the referee does not deal with them under O. 36, rr. 55B, 55C, they follow the event of the arbitration by virtue of the force given to the award by this section. (*Carr Bros.* v. *Dougherty*, 67 L. J., Q. B. 371.)

Entering Judgment.—See O. 36, r. 50; O. 36, r. 55C; (n.) "Judgment," p. 554; and Judgment Table, Vol. I., Pt. II.

(3.) The remuneration to be paid to any special referee or arbitrator to whom any matter is referred under order of the Court or a judge shall be determined by the Court or a judge.

"**The remuneration.**"—See (n.) "Fees," p. 550.

Recovery of Sum due to Arbitrator.—An arbitrator may recover by action the sum certified to be due to him. Even if he has neglected to take from the parties the usual undertaking to pay his fees, there is an implied contract to pay them. (*Willis* v. *Wakeley*, 7 Times Rep. 604.) See also *Crampton* v. *Ridley*, 20 Q. B. D. 48.

Court to have powers as in references by consent.

16. The Court or a judge shall, as to references under order of the Court or a judge, have all the powers which are by this Act conferred on the Court or a judge as to references by consent out of Court.

J. A. 1873, s. 59.

"**All the powers.**"—Power to stay, s. 4; power to appoint arbitrators, umpire, &c., s. 5; power to enlarge time, s. 9; power to remit, s. 10 (see, however, (n) under that section "In all cases of reference"); power to set aside, s. 11; and see O. 40, r. 6, and *Serle* v. *Fardell*, 44 C. D. 299; and *Proudfoot* v. *Hart*, 25 Q. B. D. 42.

"**On the Court or a Judge.**"—Or a Master, O. 54, r. 12A. See s. 11, (n.) "The Court."

17. Her Majesty's Court of Appeal shall have all the powers conferred by this Act on the Court or a judge thereof under the provisions relating to references under order of the Court. Court of Appeal to have powers of court.

J. A. 1873. s. 59.

"**On the Court or a Judge.**"—See (n.) to last section.

GENERAL.

18.—(1.) The Court or a judge may order that a writ of *subpœna ad testificandum* or of *subpœna duces tecum* shall issue to compel the attendance before an official or special referee, or before any arbitrator or umpire, of a witness wherever he may be within the United Kingdom. Power to compel attendance of witness in any part of the United Kingdom, and to order habeas corpus to issue.

(2.) The Court or a judge may also order that a writ of *habeas corpus ad testificandum* shall issue to bring up a prisoner for examination before an official or special referee, or before any arbitrator or umpire.

See ss. 7 and 8. *supra*. And see especially as to application of this section. O. 37, r. 20, (n.) "Witness in Scotland or Ireland."

"**The Court or a Judge.**"—Or a Master. O. 54, r. 12A; and see s. 11. (n.) "The Court."

19. Any referee, arbitrator, or umpire may at any stage of the proceedings under a reference, and shall, if so directed by the Court or a judge, state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference. Statement of case pending arbitration.

See C. L. P. Act, 1854, s. 4.

"**May.**"—If a reasonable and proper request is made by one of the parties for the statement of a case, and the arbitrator refuses to state one or to adjourn pending an application to the Court, and makes his award, that is misconduct, and the award may be remitted with an order to state a case. (*Re Palmer & Co. and Hosken & Co. Arbn.*, (1898) 1 Q. B. 131.) But if an application for a special case or an adjournment is frivolous and made merely for delay, the arbitrator will be right to refuse, and will be upheld by the court in so doing (S. C.).

There is some doubt whether an agreement is valid between parties that the arbitrator shall not be required to state in the form of a special case any question of law which may arise. (*Re Montgomery & Co. and Liebenthal & Co. Arbn.*, 78 L. T. 406.)

"**At any Stage of the Proceedings.**"—This means before the proceedings have come to an end by a completed award. (*Tabernacle Permt. Bldg. Soc.* v. *Knight*. (1892) A. C. 298.) And if no request is made to the arbitrator before the proceedings have terminated in an award the Court cannot direct the arbitrator to state a special case. (*Re Montgomery and Liebenthal*, 78 L. T. 406.) But the Court has, it seems, power to remit an award, under s. 10, with a direction to the arbitrator to restate his award in the form of a special case so as to raise the point of law whether his calculation of compensation or price has proceeded on a right principle. (*Re Kirkleatham Local Bd. and Stockton Water Bd. Arbn.*, (1893) 1 Q. B. 375.)

"**And shall, if so directed.**"—The compulsory power given by this section may be put in force, although the arbitrator or umpire has not indicated in any way his opinion on the point of law raised. (*Re Spillers and Baker (Limtd.) and Leetham and Sons' Arbn.*, (1897) 1 Q. B. 312.)

Arb. Act, 1889, ss. 19—21.

But neither under s. 22 of the Friendly Societies Act, 1875 (56 & 57 Vict. c. 30) : nor under the Building Societies Acts (57 & 58 Vict. c. 47, s. 20). can an arbitrator be compelled to state a case by resort to this section. This section (19) however applies to an arbitrator appointed under the Local Government Act, 1888, s. 63. (*Re Kent County Council and Sandgate Lcl. Bd. Arbn.*, (1895) 2 Q. B. 43.)

"**Special Case . . . Question of Law.**"—(For special case under a submission cf. also s. 7. *supra*.)

In re Gough and the Mayor, &c., of Liverpool, 6 Times Rep. 453. the arbitrator on a reference under the provisions of the Liverpool Sanitary Amendment Act was ordered to state a case for the opinion of the Court showing his reasons for the decision given by him in his award. And see *Re Carlisle*, 44 C. D. 200 : *Pearks* v. *Eames*, W. N. (90) 143.

In re Knight and the Tabernacle Permt. Bldg. Soc., (1891) 2 Q. B. 63, it was held that this Act applies to arbitrations under previous statutes unless the inconsistency spoken of in s. 24, *infra*, is of such a nature as to render the earlier statute unworkable (affirmed on appeal to H. L., *Tabernacle, &c., Bldg. Socy.* v. *Knight*, (1892) A. C. 298). Notwithstanding that case, however, the Court has no longer power to compel arbitrators appointed under the Building Societies Acts to state a special case. See 57 & 58 Vict. c. 47. s. 20.

No Appeal.—The jurisdiction of the H. Ct. in dealing with a special case hereunder is consultative only. The opinion expressed is not an order, and there is no appeal (*Re Knight* v. *Tabernacle, &c., Bldg. Socy. Arbn.*, (1892) 2 Q. B. 613. See *Jones* v. *Victoria Graving Dock Co.*, 2 Q. B. D. 314.) (*Quære*, whether this ruling is affected by J. A. 1894, s. 1, (b), (v), *ante*, which applies only to "any *order* on a special case under the Arb. Act. 1889" (see s. 7 (*b*), (n.) "Appeal"). The case of *Re Kirkleatham Lcl. Bd., &c., Arbn.*, cited *supra*, was held not within this section, and appeal from the divisional court was allowed.)

Orders to state a Case, Refused.—Gough v. *Liverpool Corpn.*, 36 Sol. Jo. 270 ; *Re Gray & Co. and Bonstead & Co. Arbn.*, 8 Times Rep. 703.

Costs of Special Case.—The Court cannot award costs of special case stated hereunder unless empowered by the order (*Knight and Tabernacle, &c., Arbn.*, (1892) 2 Q. B. 613).

Practice.—Where the special case is stated for the opinion of a judge of the Chancery Division. it will be assigned to a judge by ballot at the Writ, &c., Dept., Central Office, after which it must be filed at the Filing Dept., Central Office.

A special case for the opinion of the Divisional Court, Q. B. D., is set down at the Associates' Dept. (Court Orders), and after hearing is transmitted by that Dept. to the Filing Dept., and there filed. Fee for filing £1. Court Fees, 1884, No. 28, Pt. II., *ante*.

Costs.

20. Any order made under this Act may be made on such terms as to costs, or otherwise, as the authority making the order thinks just.

See s. 2, (n.) (*i*), s. 7, (n.) "Costs," s. 19, (n.) "Costs of Special Case."

"**On such Terms as to Costs.**"—The usual form of order (Appx. K., No. 33A, Pt. I., *ante*) contains no special provision as to costs, which are therefore in the discretion of the referee or arbitrator by virtue of O. 36, rr. 55A, 55C. See s. 14, *supra*, (n.) "Costs."

Exercise of powers by masters and other officers.

21. Provision may from time to time be made by rules of Court for conferring on any Master or other officer of the Supreme Court, all or any of the jurisdiction conferred by this Act on the Court or a judge.

By O. 54, r. 12A, a Master may exercise all the jurisdiction and powers conferred by the Act upon the court or a judge. And as to the C. A., see s. 17, *supra*.

22. Any person who wilfully and corruptly gives false evidence before any referee, arbitrator, or umpire shall be guilty of perjury, as if the evidence had been given in open court, and may be dealt with, prosecuted, and punished accordingly.

Penalty for perjury.

Manufacture of False Evidence to be used in Arbitration.—This is an indictable offence at Com. Law, even though the arbitration did not take place and the false evidence was not used. (*Reg.* v. *Vreones*, (1891) 1 Q. B. 360.)

23. This Act shall, except as in this Act expressly mentioned, apply to any arbitration to which Her Majesty the Queen, either in right of the Crown, or of the Duchy of Lancaster or otherwise, or the Duke of Cornwall, is a party, but nothing in this Act shall empower the Court or a judge to order any proceedings to which Her Majesty or the Duke of Cornwall is a party, or any question or issue in any such proceedings, to be tried before any referee, arbitrator, or officer without the consent of Her Majesty or the Duke of Cornwall, as the case may be, or shall affect the law as to costs payable by the Crown.

Crown to be bound.

24. This Act shall apply to every arbitration under any Act passed before or after the commencement of this Act as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration or with any rules or procedure authorised or recognised by that Act.

Application of Act to references under statutory powers.

"**Under any Act passed before, &c.**"—See for instance Lands Clauses Act, 1845, (and cf. (nn.) under the name of that Act. to s. 12, *supra*, and s. 27, *infra*); Railway Companies Arb. Act, 1859; Public Health Act, 1875, s. 308, see *Davis* v. *Witney Urban District Council*, 14 Times Rep. 433; Agricultural Holdings Act, 1883; Allotments (Compensation for Crops) Act, 1887; Local Govt. Act, 1888, s. 63, *Re Kent County Council and Sandgate, &c., Arbn.*, (1895) 2 Q. B. 43; Factory and Workshop Act, 1891. As to Friendly Societies Act, 1875, see *Re Gollings and Tradesmen's Friendly Society Arbn.*, 64 L. T. 775, cited *ante*, s. 11 (n.). As to arbitration to fix amount of charge for pauper lunatic, see Local Government Act, 1888, s. 62, and *Howlett* v. *Mayor, &c., of Maidstone*, (1891) 2 Q. B. 110, and *Re Sowerby Urban Dist. Council and Mytholmroyd, &c., Council Arbn.*, 74 L. T. 313.

"**As if the Arbitration were pursuant to a Submission.**"—The effect of this section is not in any way to introduce into arbitrations conducted under this Act provisions for arbitration contained in other Acts, but merely to apply the provisions of this Act to arbitrations under other Acts so far as such arbitrations are not conducted under statutory provisions inconsistent with the provisions of this Act. (*Zelma Gold Mining Co.* v. *Hoskins*, (1895) A. C. 100.)

"**Except in so far as inconsistent.**"—See *Re Knight and the Tabernacle Permanent Building Society Arbn.*, (1891) 2 Q. B. 63, and *Tabernacle, &c., Building Society* v. *Knight*, (1892) A. C. 298, cited under s. 19, *supra*.

25. This Act shall not affect any arbitration pending at the commencement of this Act, but shall apply to any arbitration commenced after the commencement of this Act under any agreement or order made before the commencement of this Act.

Saving for pending arbitrations.

"**Pending.**"—See *Re Smith and Nelson's Arbitration*, 25 Q. B. D. 545.

"**Shall apply to any arbitration.**"—This means the whole of the arbitration, and its effect is to make s. 2 retrospective, see *Williams and*

Arb. Act, 1889. ss. 25—30.

Stepney Arbn., (1891) 2 Q. B. 257, cited *supra*, s. 2, (n.) "Submission." See also *Knight and the Tabernacle Permanent Bldg. Society*, cited s. 19. *supra* (n.). Unless the submission expresses a contrary intention: see *Re Wilson & Son and Eastern Counties Navn. Co. Arbn.*, (1892) 1 Q. B. 81.

Repeal.

26.—(1.) The enactments described in the second schedule to this Act are hereby repealed to the extent therein mentioned, but this repeal shall not affect anything done or suffered, or any right acquired or duty imposed or liability incurred, before the commencement of this Act, or the institution or prosecution to its termination of any legal proceeding or other remedy for ascertaining or enforcing any such liability.

(2.) Any enactment or instrument referring to any enactment repealed by this Act shall be construed as referring to this Act.

Definitions.

27. In this Act, unless the contrary intention appears,—

"Submission" means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

Cf. s. 1 (n.) "A submission," *ante*, p. 529; and *Re Carus Wilson*, 18 Q. B. D. 7; and other cases there cited.

"**Agreement.**"—The agreement must be signed by both parties or their authorised agents. A mere stipulation inserted by one party and not formally agreed to by the other does not constitute a submission. (*The Caerleon Tinplate Co.* v. *Hughes*, 60 L. J., Q. B. 640.) But a proviso in an insurance policy stipulating that differences arising between the company and the insured should be referred to arbitration was held to bind the insured after he had affirmed the contract by suing on the policy. (*Baker* v. *Yorkshire, &c., Insce. Co.*, (1892) 1 Q. B. 144.) And where an action was settled in court and counsel on both sides endorsed and signed a note, each on his own brief. "counterclaim withdrawn . . . claims shall be referred to arbitration as quickly as possible," the Court held that such endorsements taken together constituted a submission within this section. (*Aitken* v. *Batchelor*, 62 L. J., Q. B. 193.)

Lands Clauses Consolidation Act, 1845.—Section 25 of that Act provides that an appointment of an arbitrator thereunder "shall be deemed a submission to arbitration on the part of the party by whom the same shall be made."

"Court" means Her Majesty's High Court of Justice.

See Chancery of Lancaster Act, 1890, s. 3.

"Judge" means a judge of Her Majesty's High Court of Justice.

"Rules of Court" means the Rules of the Supreme Court made by the proper authority under the Judicature Acts.

Extent.

28. This Act shall not extend to Scotland or Ireland.

Commencement.

29. This Act shall commence and come into operation on the first day of January one thousand eight hundred and ninety.

Short title.

30. This Act may be cited as the Arbitration Act, 1889.

THE FIRST SCHEDULE.

(This schedule is printed for convenience of reference in the note to section 2.)

THE SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
9 Will. 3, c. 15.	An Act for determining differences by arbitration.	The whole Act.
3 & 4 Will. 4, c. 42.	An Act for the further amendment of the law and the better advancement of justice.	Sections thirty-nine to forty-one, both inclusive.
17 & 18 Vict. c. 125.	The Common Law Procedure Act, 1854.	Sections three to seventeen, both inclusive.
36 & 37 Vict. c. 66.	The Supreme Court of Judicature Act, 1873.	Section fifty-six, from "Subject to any Rules of Court" down to "as a judgment by the Court," both inclusive, and the words "special referees or." Sections fifty-seven to fifty-nine, both inclusive.
47 & 48 Vict. c. 61.	The Supreme Court of Judicature Act, 1884.	Sections nine to eleven, both inclusive.

SECTIONS OF THE

COUNTY COURTS ACT, 1888.

(51 & 52 VICT. c. 43, ss. 116, 64, 65, 66, 69, in substitution for 30 & 31 Vict. c. 142, ss. 5, 7, 8, 10.)

C. C. Act, 1888, s. 116.

Costs when not recoverable in High Court.

116. With respect to any action brought in the High Court which could have been commenced in a county court, the following provisions shall apply :—

1. If in an action founded on contract the plaintiff shall recover a sum less than twenty pounds, he shall not be entitled to any costs of the action, and if he shall recover a sum of twenty pounds or upwards, but less than fifty pounds, he shall not be entitled to any more costs than he would have been entitled to if the action had been brought in a county court ; and
2. If in an action founded on tort the plaintiff shall recover a sum less than ten pounds, he shall not be entitled to any costs of the action ; and, if he shall recover a sum of ten pounds or upwards, but less than twenty pounds, he shall not be entitled to any more costs than he would have been entitled to if the action had been brought in a county court; unless in any such action, whether founded on contract or on tort, a Judge of the High Court certifies that there was sufficient reason for bringing the action in that Court, or unless the High Court or a Judge thereof at Chambers shall by order allow costs. Provided that, if in any action founded on contract the plaintiff shall within twenty-one days after the service of the writ, or within such further time as may be ordered by the High Court or a Judge thereof, obtain an order under Order fourteen of the Rules of the Supreme Court empowering him to enter judgment for a sum of twenty pounds or upwards, he shall be entitled to costs according to the scale for the time being in use in the Supreme Court.

The Cty. Ct. Act, 1867, has been repealed by the Cty. Cts. Act, 1888, and the above section of the latter Act is substituted for s. 5 of the former. (See J. A. 1873, s. 67, *ante*, and O. 65, r. 12.) This section must be read with O. 65, rr. 1—12. See O. 65, r. 1, (n.) "In the discretion of the Court."

"**Any Action.**"—Under the repealed section it was held that if an action was begun in an inferior Court the section applied. (*Pellas* v. *Breslauer*, 6 Q. B. 438 ; *Flitters* v. *Allfrey*, 10 C. P. 29.)

It has been held in Ireland, under the similar provisions of C. L. P. Acts (Ireland), 1853, s. 243, and 1856, s. 97, and R. S. C. (Ir.), O. 65, r. 4, that an action for recovery of chattels was not within these provisions, which apply only to actions in which money is sued for and recovered. (*Bradley* v. *Archibald*, (1899) 2 I. R. 108.)

"**Which could have been commenced.**"—See *Parsons* v. *Tinling*, 2

C. P. D. 119; *Curtis* v. *Stovin*, 22 Q. B. D. 513; and see *Lovejoy* v. *Cole*, cited *infra* (n.) "Set-off."

Claim under Sect. 157.—Where a claim arises in respect of any goods taken in execution under process issued by a County Court, the County Court judge has jurisdiction to entertain it, no matter how large the amount claimed. See Cty. Cts. Act, 1888, s. 157, and *Smith* v. *Benskin*, 94 L. T. Jo. 285.

Set-off.—(Cf. also (n.) "Shall Recover," *infra*.) If the claim is over £50 and a subsequent set-off reduces it below that amount, the action is still one which could not have been commenced in the County Court. In order to bring the case within this section, the set-off must have been admitted by both parties (*Goldhill* v. *Clarke*, 68 L. T. 414), or at any rate by the person against whose interest it is to admit the same. Thus a credit given in the indorsement of claim reducing the amount recoverable to £50 makes the action one which could have been brought in the County Court. The test is the amount for which the plaintiff recovers judgment, not that which he indorses on his writ. Thus a plaintiff claimed £148 less £25 set-off, balance £123. The balance claimed was beyond the jurisdiction of the county court. Action brought in High Court. In the result plaintiff recovered £75, less £25 set-off, total £50. Held, that the action was one which could have been brought in the county court. High Court costs refused. (*Lovejoy* v. *Cole*, (1894) 2 Q. B. 861.)

"**The Plaintiff.**"—The repealed section did not apply to counterclaim. (*Blake* v. *Appleyard*, 3 Ex. D. 195; *Lewin* v. *Trimming*, 21 Q. B. D. 230. As to solicitor, plaintiff, *Blair* v. *Eisler*, 21 Q. B. D. 185.)

"**Shall recover.**"—The application of Cty. Ct. Act, 1867, s. 5 in cases where the plaintiff's claim was reduced by set-off or counterclaim below the amount mentioned in the statute was open to some doubt. It appears to have been decided that (1) where the claim was not within the jurisdiction of the county court, as where it exceeded £50, even though it were reduced by set-off or counterclaim below the limit mentioned in the section, the plaintiff was entitled to his costs. (*Potter* v. *Chambers*, 4 C. P. D. 69; *Chatfield* v. *Sedgwick*, *Idem*, 459; *Neale* v. *Clarke*, 4 Ex. D. 286.) (2) Where the plaintiff's claim was within the jurisdiction of a County Court, and was reduced within the limit fixed by the statute by a *set-off*, as distinguished from a *counterclaim*, the plaintiff was not entitled to costs. (*Ashcroft* v. *Foulkes*, 18 C. B. 261; *Stooke* v. *Taylor*, 5 Q. B. D. 569; *Baines* v. *Bromley*, 6 Q. B. D. 691.) (3) Where the plaintiff's claim was reduced not by a *set-off* but by a *counterclaim* (such as could not have been pleaded as a defence before the passing of the Judicature Acts, as, for instance, a counterclaim for damages), it would seem that the plaintiff was entitled to costs if the amount of the claim established by him exceeded the limit fixed by the section, although the balance, after deducting the amount recovered by the defendant, was within such limit. (*Lund* v. *Campbell*, 14 Q. B. D. 821; *Ahrbecker* v. *Frost*, 17 Q. B. D. 606; *Stooke* v. *Taylor*, *ubi supra*; and see *Potter* v. *Chambers*, 4 C. P. D. 69; *Blake* v. *Appleyard*, 3 Ex. D. 194; *Lewin* v. *Trimming*, *supra*, and the cases cited, O. 19, r. 3, (n.) "Costs.") See also (n.) "Set-off," *supra*.

Where an action is referred by consent upon the terms that the costs abide the event, a plaintiff who recovers under the award a sum less than £20 is deprived of his costs hereunder (*Fergusson* v. *Davison*, 8 Q. B. D. 470; cf. *Galatti* v. *Wakefield*, 4 Ex. D. 249); and the arbitrator has no power to certify for costs. (*Bedwell* v. *Wood*, 2 Q. B. D. 626, and see *Cox* v. *Hill*, 67 L. T. 26.)

When less than £20 is paid into Court and accepted in satisfaction the plaintiff is deprived of his costs by this section. See *Boulding* v. *Tyler*, 3 B. & S. 472; *Hewitt* v. *Cory*, L. R. 5 Q. B. 418; *Fleming* v. *Manchester*, *&c.*, *Ry. Co.*, 4 Q. B. D. 82; *Hehir* v. *Dublin Tramways*, (1897) 2 I. R. 127.

"**Less than £50.**"—If he recover exactly £50, he is still only entitled to costs on the County Court scale, unless the judge certifies as provided or he is within the proviso as to O. 14, because then O. 65, r. 12, applies. (*Millington* v. *Harwood*, (1892) 2 Q. B. 166.)

C. C. Act, 1888, s. 116.

"**Contract.**"—See *Baylis* v. *Lintott*, L. R. 8 C. P. 345; *Fleming* v. *Manchester, &c., Ry. Co.*, 4 Q. B. D. 81; *Laven* v. *Waterford and Limerick Ry. Co.*, 26 Ir. L. T. R. 44, and see quotation from the judgment in *Kelly* v. *Metro. Ry. Co.*, *infra*.

"**Tort.**"—See *Pontifex* v. *Midland Ry. Co.*, 3 Q. B. D. 23; and *Cohen* v. *Foster*, 66 L. T. 616. An action of detinue was an action of "tort" within the repealed section. (*Bryant* v. *Herbert*, 3 C. P. D. 389.) And it has been held under this section (116) that an action for personal injuries by a passenger against a railway company is an action of tort. (*Taylor* v. *Manchester, &c., Ry.*, (1895) 1 Q. B. 134.) Whether the statement of claim be framed in contract or tort. (*Kelly* v. *Metro. Ry. Co.*, (1895) 1 Q. B. 944.) In the last-named case, Smith, L.J., drew the following distinction between contract and tort in the case of an action for personal injuries: "If the cause of complaint be for an act of omission or nonfeasance which, without proof of a contract to do what has been left undone would not give rise to any cause of action at all (because no duty apart from contract to do what is complained of exists) then the action is founded upon contract and not upon tort. If on the other hand the relation of the plaintiff and the defendants be such that a duty arises from the relationship, irrespective of contract, to take due care, and the defendants are negligent, then the action is one of tort." Thus where the plaintiff's action was for damages in respect of a horse delivered to the defendant to be agisted and taken care of, which became injured through defendant's negligence, it was held to be an action of tort within this section. (*Turner* v. *Stallibrass*, (1898) 1 Q. B. 56.)

"**Unless * * * a judge of the High Court certifies.**"—The effect of these words is to get rid of *Taylor* v. *Cass*, L. R. 4 C. P. 614 (allowing a County Court judge to certify), and *Craven* v. *Smith*, L. R. 4 Ex. 146 (allowing an under-sheriff to certify on writ of inquiry). The certificate must be by a judge of the High Court (*Cox* v. *Hill*, 67 L. T. 26), except under the Slander of Women Act, when the under-sheriff may certify. See (n.) "Libel," &c., p. 567, *infra*.

O. 65, r. 12 (*q.v.* and nn.) is superseded by this section, which in effect re-enacts that rule and preserves the power of a judge to give costs on the High Court scale. (*Barker* v. *Hempstead*, 23 Q. B. D. 8, cited O. 14, r. 1, (n.) "Proviso in County Courts Act, 1888.")

"**Or unless the High Court,**" **&c.**—The Judicature Acts and Rules were held to have incorporated into the same alternative in Cty. Ct. Act, 1867, s. 5, the power to give costs less than full High Court costs. (*Neaves* v. *Spooner*, 36 W. R. 257.)

"**Judge at Chambers.**"—But not by Master, O. 54, r. 12 (i.), or District Reg., O. 35, r. 6. As to the jurisdiction and practice at chambers, see J. A. 1873, ss. 39 and 50. There are several cases of appeal from the discretion exercised by the judge under this section before the Judicature Act, 1873. *Flitters* v. *Allfrey*, L. R. 10 C. P. 29; *Barlow* v. *Briggs*, 20 W. R. 866; *Sampson* v. *Mackay*, L. R. 4 Q. B. 643. See now and consider J. A. 1873, s. 49.

Practice. Costs in High Court Actions.—The limitations as to costs imposed by the above section do not apply to *all* actions brought in the High Court, but only to such of them as "could have been commenced in a County Court," see (n.) "In which the action might have been commenced," s. 65, *infra*. Therefore actions coming under any of the following heads are (see J. A. 1890, s. 5, *ante*) exceptions to the above section, and the costs on the High Court scale follow the event, however small the amount recovered. (*Garnett* v. *Bradley*, 3 App. Cas. 944), viz.:—

EXCEPTIONS TO COUNTY COURTS ACT, 1888, SEC. 116.

(*Actions which could* not *have been commenced in a County Court.*)

Admiralty Jurisdiction.—See *Mersey Docks, &c., Co.* v. *Turner*, (1893) A. C. 468.

C. C. Act, 1888, s. 116.

Ejectment.—Where annual value of property or rent exceeds £50 a year. (Cty. Cts. Acts, 1888, s. 59.) As to jurisdiction of Cty. Ct., see also *Foster* v. *Reeves*, (1892) 2 Q. B. 255.

Title.—To corporeal or incorporeal hereditaments, where value of property exceeds £50 a year (Cty. Cts. Act, 1888, s. 60). In an action in the High Court for trespass where 40*s.* damages was recovered, and the value of the land was only about £10 altogether, the Divisional Court held that the plaintiff was not entitled to any costs, even though an injunction was obtained. (*St. John's College* v. *Pierrepont*, 61 L. J. Q. B. 19.)

An action for trespass, where plaintiff's title is not disputed, is not an action involving questions of title, and is therefore triable in a County Court. (*Hawkins* v. *Rutter*, (1892) 1 Q. B. 668.) But in any case where the question of title really and *bonâ fide* comes in issue and the value of the hereditament claimed, or of the hereditament in respect of which an easement is claimed, exceeds £50 a year, the successful party is entitled to Supreme Court costs no matter how small the amount recovered. (*Howorth* v. *Sutcliffe*, (1895) 2 Q. B. 358.) Cf. *Stolworthy* v. *Powell*, 55 L. J. Q. B. 228, and *Bassano* v. *Bradley*, (1896) 1 Q. B. 645.

Title.—The title to any toll, fair, market, or franchise (s. 56). The word "franchise" in this section includes the title to a patent, so that an action for infringement of patent cannot be brought in a County Court, but only in the High Court as provided by the Patents Act, 1883. (*Reg.* v. *County Court Judge of Halifax*, (1891) 1 Q. B. 793, (1891) 2 Q. B. 263.)

Libel; slander; seduction; or, *Breach of Promise of Marriage* (s. 56). Also, *semble*, where writ of summons issued pursuant to order to issue and serve out of the jurisdiction in an action against a defendant out of the jurisdiction, who neither dwells, nor carries on business, within a county court district: see *Mendelsohn* v. *Hoppe*, W. N. (84) 31, and cf. s. 74 of this Act, and *Weatherley* v. *Calder*, 61 L. T. 508.

In an action for slander of a woman, a plaintiff cannot recover more costs than damages unless the judge certifies that there was reasonable ground for bringing the action (54 & 55 Vict. c. 51). In a case of *Boote* v. *Chirnside* (argued before Day, J., in Chambers on 24 June, 1895), the judge decided that the certificate of the under-sheriff, upon execution of a writ of inquiry, was under the last-mentioned Act a sufficient authority for giving costs on the High Court scale.

Tithe.—The county courts have jurisdiction to hear and determine applications for redemption money under the Tithe Act, 1891. (*Reg.* v. *Paterson*, (1895) 1 Q. B. 31.)

Dramatic Copyright.—*Semble*, an action for penalties under *Dramatic Copyright Act* (3 & 4 Will. IV. c. 15, s. 2), is an exception to the above section, and the combined effect of that Act and 56 & 57 Vict. c. 61, s. 1 (b), is to give the plaintiffs costs to be taxed as between solicitor and client. (See decision under former enactment in *Reeve* v. *Gibson*, (1891) 1 Q. B. 652.) But the term "full costs" means ordinary costs as between party and party, not as between solicitor and client. (*Avery* v. *Wood*, (1891) 3 Ch. 115.)

Copyright—Musical Compositions.—The judge has absolute discretion as to costs even though less than 40*s.* recovered. See 51 & 52 Vict. c. 17, s. 2.

Malicious Prosecution.—Note that this is no longer excluded from the jurisdiction of the county court. Compare County Courts Act, 1888, s. 56, and 9 & 10 Vict. c. 95, s. 58.

Counterclaim.—Amount recovered on, however small, carries costs (*Blake* v. *Appleyard*, 3 Ex. D. 195. See *Amon* v. *Bobbett*, 22 Q. B. D. 543, and O. 65, r. 12).

Set-off.—If the plaintiff's claim is over £50 and a set-off which is not admitted by the plaintiff is successfully pleaded, and the plaintiff recovers less than £20, he is still entitled to Supreme Court costs, as the

C. C. Act, 1888, s. 116.

action is one which could not have been brought in the Cty. Ct. (*Goldhill* v. *Clarke*, 68 L. T. 414.)

And see (nn.) "Shall recover" and "Set-off," *supra*, p. 565.

Costs follow the event in these cases: on entering up judgment, after verdict of jury (O. 65, r. 1); in default of appearance (O. 13), (except for recovery of land alone, for which judgment in default of appearance carries no costs); default of defence (O. 27); and where ordered by order for judgment. The following table will explain the effect of the above on costs in High Court actions.

SCALES OF COSTS IN HIGH COURT ACTIONS.

Costs allowed.	Where judgment recovered in the action is for:—	Or where the following circumstances exist.
On HIGH COURT SCALE.	Over £50 (contract) or £20 or upwards (tort).	
Ditto.	*One Farthing* or upwards.	Provided action could not have been brought in the County Court (see exceptions to s. 116, *supra*).
Ditto.	*One Farthing* or upwards.	Where defendant recovers on a counterclaim (see *supra*).
Ditto.	£20 or upwards (contract).	Provided order for judgment under O. 14 is obtained within 21 days from service of writ, or further time ordered.
Ditto.	Recovery of land only (except in default of appearance, for which see *infra*).	Whether the action could have been brought in the County Court or not; for where no money is recovered s. 116 does not apply. Where any sum for rent or mesne profits is recovered the section does apply, and costs are regulated accordingly. Cf. *Bradley* v. *Archibald*, (1899) 2 I. R. 108, cited (n.) "Any Action," *supra*, p. 564.
On COUNTY COURT SCALE.	£20 or upwards, and not more than £50 (contract) or £10 or upwards, and less than £20 (tort).	Unless judge of High Court certifies sufficient reason for bringing action in High Court, or by order allows costs; or, in action on contract, order under O. 14 obtained within 21 days from service of the writ, or further time ordered.
NO COSTS.	Under £20 (contract), or £10 (tort).	Unless claim of such a kind that action could not have been brought in County Court (see exceptions to s. 116, *supra*), or unless judge of High Court certifies for or orders costs.
Ditto.	For recovery of land only, on default of appearance.	

"**Unless the High Court * * * allow Costs.**"—What costs are they which a Judge "may allow" in any action founded on contract dealt

C. C. Act, 1888, s. 116.

with by s.s. 1? First, he may allow costs where otherwise there would be none, that is, where plaintiff has recovered less than "£20, contract (or £10, tort)." Secondly, where plaintiff has recovered £20, or upwards, but less than £50; and in the second case he may allow costs on the High Court scale: *per* Manisty, J., *Bazett* v. *Morgan*, 24 Q. B. D. p. 52; approving *Neaves* v. *Spooner*, 36 W. R. 257. And where less than £20 is recovered, he may allow costs on High Ct. scale, though the order for judgment under O. 14 is not obtained until after the expiration of the 21 days mentioned in the proviso at the end of this section; and there is no appeal (*ibid.*).

When once an action is remitted under s. 65, the jurisdiction of the H. Ct. ceases. (*Harris* v. *Judge*, 40 W. R. 461; (1892) 2 Q. B. 565.) See (n.) "Remitted Action," *infra*.

Appeal.—If the judge allows costs hereunder where less than £20 (contract) or £10 (tort) is recovered, it is an exercise of discretion, and s. 49 of J. A., 1873, applies to this order, so that there can be no appeal from it except by leave. And this applies though the sum is recovered by acceptance of money paid into Court with denial of liability. (*Utah* v. *May*, 15 Times Rep. 307.)

"Provided that if in any Action," &c.—Writ under O. 3, r. 6, to recover £47 on contract; within 21 days after service plaintiff obtained order under O. 14 to enter judgment for £45. Held entitled to costs of whole action on H. Ct. scale, *Barker* v. *Hempstead*, 23 Q. B. D. 8. The same rule applies to a conditional order under O. 14, ordering payment of part of the claim (not less than £20) within a given time, otherwise judgment, and remission of the residue of the action to the County Court. Even if the defendant pays and no judgment is signed in the High Court, the plaintiff is entitled to have his costs taxed in the County Court on the High Court scale. (*Woodin* v. *Bailey*, 98 L. T. Jo. 89.) But where less than £20 was recovered in H. Ct. under O. 14, and remainder of action remitted to County Court, and the total amount recovered in both Courts was under £50, it was held that the plaintiff was only entitled to costs on the County Court scale. (*Wilson* v. *Statham*, (1891) 2 Q. B. 261; *Cook* v. *Crews*, 10 R. 345.)

The policy of the Act (Cty. Cts. Act, 1888) is to encourage proceedings in the H. C. when the benefit of O. 14 can be obtained. (*Barker* v. *Hempstead*, *supra*.)

Discretion of Court as to Costs.—See *Williams* v. *Allen*, 60 L. T. 103.

The High Court has a discretion to allow costs on the High Court scale under s.s. 2 of this section. See (n.), *supra*, "Unless the High Court," &c., and *Bazett* v. *Morgan*, there cited. And from the exercise of such discretion there is no appeal: *Ibid.*

As to the discretion of a Cty. Ct. Judge to allow costs on a higher scale, see *King* v. *Charing Cross Bank*, 24 Q. B. D. 27; *Badcock* v. *Hunt*, 38 W. R. 255.

Remitted Action.—(Cf. also (n.) "As if the action had," &c., p. 574.)

An action remains subject to the jurisdiction of the High Court until the plaintiff has lodged the original writ and order to remit, with the registrar. (*Welply* v. *Buhl*, 3 Q. B. D. 80, 253; *D'Erriew* v. *Samuel* (1896), 1 Q. B. 163.)

This section applies to all actions brought in the High Court whether they have been remitted under sec. 65, *infra*, or not (see judgment of Lindley, L.J., in *Harris* v. *Judge* (1892), 2 Q. B. p. 569), except that a County Court judge cannot give the certificate mentioned in sub-sec. 2 (*White* v. *Cohen* (1893), 1 Q. B. p. 589), and it applies to such actions both before and after remission, operating, in fact, as an exception to the terms of sec. 65, with which it is to be read. The precise position established by the cases appears to be as follows:—

(1.) Where an action commenced in the High Court which *could* have been commenced in the County Court is remitted to the County Court

C. C. Act, 1888, s. 116.

under sec. 65, *infra*, the costs are regulated by that section subject to sec. 116, *supra*.

(a) if less than £20 (contract), or less than £10 (tort), is recovered, the plaintiff is not entitled to any costs at all, either in the High Court or the County Court.

(b) if £20 contract is recovered but *not more* than £50 (see (n.) "Less than £50," *supra*, p. 565); or £10 tort but *less* than £20, plaintiff is entitled to costs on the County Court scale only, both in the High Court and the County Court. It makes no difference whether the amount is recovered wholly in the County Court after remission, or partly in the High Court and partly in the County Court.

(c) if over £50 is recovered the plaintiff is entitled to costs on the High Court scale; and the amount recovered is the total amount recovered by virtue of the proceedings in the action, adding together the amount recovered before remission and the amount recovered afterwards, in the County Court. (*Keeble* v. *Bennett* (1894), 2 Q. B. 329. and *White* v. *Headland's, &c., Co.*, (1899) 1 Q. B. 507, overruling *Bailey* v. *Watson*, (1898) 2 Q. B. 270; see also *Bradshaw* v. *Thackray*, 106 L. T. Jo. 334.)

(d) in neither of the above cases (a) or (b) can a Judge of the High Court after remission of the action certify for or order costs to be given, or fix the scale of costs. His jurisdiction ceases directly the action is remitted. Nor can any one else certify.

(e) The proviso at the end of sec. 116 as to judgments under O. 14, cannot be extended by order so as to give the plaintiff after remission the costs of nugatory proceedings under O. 14. The judge in chambers has no power to attach to the order to remit, a condition that the costs of proceedings under O. 14, terminating in leave to defend, are to be costs in the cause in the County Court.

(2.) Where an action commenced in the High Court which *could not* have been commenced in the County Court is remitted to the County Court under sec. 65, *infra*, the costs are regulated by the terms of that section, and such regulation cannot subsequently be altered by either the County Court Judge or a Judge of the High Court.

(3.) If, after remission, further proceedings are taken in the High Court and carried to the Court of Appeal, the latter court has jurisdiction to order the costs of appeal to be paid by the unsuccessful party on the Supreme Court scale, and such costs must be taxed by the taxing master of the Supreme Court. Section 66 of the Cty. Cts. Act does not apply to the C. A., but only to the High Court. (*D'Errico* v. *Samuel*, 75 L. T. 59.)

Cases.—*White* v. *Cohen*, (1893) 1 Q. B. 580. Action of contract for £27 10*s*. Defendant pleaded a set-off of £8 2*s*. Action remitted to County Court and plaintiff recovered £19 8*s*., balance of claim after deducting set-off. County Court registrar refused to allow any costs at all, and on appeal it was held that he was right.

Wilson v. *Statham* (cited *supra*, (n.) "Provided that if in any action").

Armitage v. *Fison*, 67 L. T. 415. Plaintiff recovered less than £20 (contract) in a remitted action. The County Court registrar allowed costs in the County Court, but refused to allow any costs *of the proceedings in the High Court*, and his decision was upheld. But this case was overruled so far as concerns the allowance of costs in the County Court by *White* v. *Cohen*, *supra*.

Harris v. *Judge* (1892), 2 Q. B. 565. Action of contract for £34 remitted to the County Court where plaintiff recovered. Subsequently a judge of the High Court made an order for costs on High Court scale up to the date of the order remitting the action. Held by C. A. that there was no jurisdiction to make such an order, for, after remission, the jurisdiction of the High Court ceased. By Lindley, L.J., that sec. 116 (*supra*) applies to a remitted action, but the duty of applying it rests with the County Court judge (though he cannot certify under the section

C. C. Act, 1888, ss. 116, 64, 65.

for High Court costs, *White* v. *Cohen, supra*). By Bowen and Kay, L.JJ., that sec. 65 determines the manner in which costs are to be dealt with in remitted actions, except that the terms of sec. 116 are to regulate the costs where the amount recovered brings the action within the terms of that section (and cf. *Bowles* v. *Drake*, 8 Q. B. D. 325; *Moody* v. *Steward*, L. R. 6 Ex. 35). Cf. also *Wilson* v. *Statham*, (1891) 2 Q. B. 261, cited *supra* (n.) "Provided that if in any action," &c.

Where defendant obtained leave to defend under O. 14 on payment of £20 10*s.* into Court, and afterwards an order to remit was made containing a direction that costs of proceedings under O. 14 were to be costs in the cause in the County Court, it was held that there was no power to give such a direction. (*Dunn* v. *Appleton*, (1898) 1 Q. B. 564.)

The certificate for costs on the High Court scale spoken of in sec. 116 can only be given by a judge of the High Court, and by him only when the action remains and is tried in the High Court. (*Harris* v. *Judge, supra*.) It cannot be given by a County Court judge or by any one but a judge of the High Court. (*Cox* v. *Hill*, 67 L. T. 26; *White* v. *Cohen, supra*.)

Keeble v. *Bennett* (1894), 2 Q. B. 329, deciding that, for the purposes of ascertaining how much a plaintiff has recovered in a remitted action the amount recovered in the High Court is to be added to the amount recovered in the County Court. Followed in *White* v. *Headland's, &c., Co.*, (1899) 1 Q. B. 507, and *Bradshaw* v. *Thackray*, 106 L. T. Jo. 134, overruling *Bailey* v. *Watson*, (1898) 2 Q. B. 270.

Costs between Solicitor and Client.—Section 118 of the Cty. Cts. Act, 1888, does not affect a solicitor's right to recover against his client the costs of a remitted action incurred in the High Court before remission. (*Cubison* v. *Mayo*, (1896) 1 Q. B. 246.)

Jurisdiction by agreement.

64. With respect to all actions assigned to the Queen's Bench Division of the High Court, if both parties shall agree by a memorandum signed by them or their respective solicitors that the judge of any Court named in such memorandum shall have jurisdiction to try such action, such judge shall have jurisdiction to try the same therein.

Cty. Cts. Act, 1856, s. 23.

Under the repealed section it was decided that when an action was commenced in the High Court, and it was afterwards agreed between the parties that it should be brought into the Cty. Ct. under that section, the action must be commenced again in the Cty. Ct. before the judge had jurisdiction to try it. (*Pearce* v. *Winkworth*, 28 L. T. 710. See also Cty. Ct. Rules, 1889, O. 5, r. 2.)

A consent hereunder for trial by County Court judge would not affect the right of appeal. (*Simmonds* v. *Rose*, 10 Times Rep. 125.)

Where judge of High Court may order action of contract to be tried in a county court.

65. Where in any action of contract brought in the High Court the claim indorsed on the writ does not exceed one hundred pounds, or where such claim, though it originally exceeded one hundred pounds, is reduced by payment, an admitted set-off, or otherwise, to a sum not exceeding one hundred pounds, it shall be lawful for either party to the action at any time, if the whole or part of the demand of the plaintiff be contested, to apply to a Judge of the High Court at Chambers to order such action to be tried in any Court in which the action might have been commenced, or in any Court convenient thereto; and on the hearing of the application the Judge shall, unless there is good cause to the contrary, order such action to be tried accordingly; and thereupon the plaintiff shall lodge the original writ and the order with the Registrar of the Court mentioned in the order, who shall appoint a day for the trial of the action, notice whereof shall be sent by post or otherwise by the Registrar to both

C. C. Act, 1888, s. 65.

parties or their solicitors, and the action and all proceedings therein shall be tried and taken in such Court as if the action had been originally commenced therein; and the costs of the parties in respect of proceedings subsequent to the order of the Judge of the High Court shall be allowed according to the scale of costs for the time being in use in the County Courts, and the costs of the order and all proceedings previously thereto shall be allowed according to the scale of costs for the time being in use in the Supreme Court.

This section seems to combine s. 26 of the Cty. Ct. Act, 1856, and s. 7 of the Cty. Ct. Act, 1867, see schedule to Act, and J. A. 1873, s. 67, (n.). Or it may be considered as a re-enactment of the latter, with the difference that the amount of claim is changed from £50 to £100, and either party may apply at any time. An action remitted under the latter section (7) became a Cty. Ct. action, and judgment was signed and execution issued in Cty. Ct., and this practice still prevails. As to the application of this section to the Liverpool Court of Passage, see 56 & 57 Vict. c. 37.

Effect of Section.—The effect of this section is that any one who brings an action of contract for an amount between £50 and £100, must commence the action in the High Court, and thereupon it may upon application be transferred to a County Court. The section applies to actions commenced before 1st Jan. 1889. *Per* Esher, M.R., *Curtis* v. *Stovin*, 22 Q. B. D. 513. A remitted action becomes for all purposes a Cty. Ct. action. Cf. (n.) "Remitted Action," p. 569.

Cross References.—Transfer of counterclaims to the High Court, see J. A. 1873, s. 90; J. A. 1884, s. 18. As to remitting counterclaims hereunder, see (n.), *infra*, "Claim indorsed on the writ;" of interpleader proceedings, J. A. 1884, s. 7.

Application.—The application is by summons to a Master, see Cty. Cts. Act, 1888, s. 188 (3), and cf. O. 54, r. 12. As to lodging order and transmitting documents, see Cty. Ct. Rules, 1889, O. 33, r. 1; and P. M. R. 1, Vol. I., Pt. II.

"Claim indorsed on the Writ."—An action for unliquidated damages, although the writ is indorsed for a specific sum, cannot be remitted hereunder. (*Bassett* v. *Tong* (1894), 2 Q. B. 332; and see *Knight* v. *Abbott*, 10 Q. B. D. 11.) But though a counterclaim for unliquidated damages could not be remitted under the County Courts Act, 1856 (*Mackay* v. *Bannister*, 16 Q. B. D. 174; *Mouflet* v. *Washburn*, 54 L. T. 16), a counterclaim within the jurisdiction of the county court can now be so remitted as part of an action within this section (*Guilford* v. *Lambeth*, (1894) 2 Q. B. 832; (1895) 1 Q. B. 92) and so also where the counterclaim even exceeds the jurisdiction of the County Court. (*Morgan* v. *Bullen*, 11 Times Rep. 153). Where the plaintiff's claim in an action was disposed of, the Court held that there was no jurisdiction hereunder to remit the defendant's counterclaim to a county court. (*Reg.* v. *Judge of City of London Court* (1891), 2 Q. B. 71; *Kirschman* v. *Fitch*, 7 Times Rep. 475. See J. A. 1884, s. 18.) A garnishee issue under O. 45, r. 4, *post*, could not be remitted to a county court under the repealed section. (*Eastwood* v. *Whiteley*, 82 L. T. Jo. 286.)

Amendment.—A County Court judge has discretion to order amendment altering parties, in a remitted action. (*Reg.* v. *Judge of Clerkenwell Cty. Ct.*, 35 Sol. Jo. 25.)

Where a writ was fraudulently indorsed for a sum over the County Court limit for the purpose of ousting the jurisdiction, the Irish Court of Q. B., on a motion to remit, amended the indorsement below the County Court limit and remitted the action. (*Jeffrey* v. *Gibson*, 28 L. R. Ir. 284.)

"Does not exceed £100."—Under the repealed section, where the limit was £50 instead of £100, it was held that a claim for "£50 and interest from date of writ until payment," &c., was above the limit. (*Insley* v. *Jones*, 4 Ex. D. 16.)

"**Reduced by Payment.**"—These words apply to payment or set-off *before* action brought; not to payment into Court, *Skinner* v. *De Furia*. 33 Sol. Jo. 254; nor to payment of part of the claim on a judgment under O. 14: *Hodgson* v. *Bell*, 24 Q. B. D. 525 (C. A.); following *Foster* v. *Usherwood*, 3 Ex. D. 1.

"**An admitted Set-off.**"—*Semble* this means admitted by both parties: cf. *Hubbard* v. *Goodley*, 25 Q. B. D. 156; *Lewis* v. *L.*, 20 Q. B. D. 56. *Goldhill* v. *Clarke*, 68 L. T. 414. But if the claim on the writ credits the defendant with a payment on account that would be an admitted set-off. (*Lovejoy* v. *Cole*, (1894) 2 Q. B. 861.)

"**Unless there is good cause to the contrary.**"—Intention to apply for judgment under O. 14 is good cause (*Smith* v. *Hurley*, W. N. (84) 99), provided the case is one suitable for the application of O. 14. (*Miers* v. *Gardner*, 28 Sol. Jo. 495). The existence of a counterclaim is not good cause against remission. See *Morgan* v. *Bullen*, 11 Times Rep. 153, cited *supra*, (n.) "Claim indorsed on Writ."

"**In which the action might have been commenced * * * or convenient thereto.**"—These words have been variously interpreted. The result appears to be that an action may be transmitted to any County Court in which it could have been commenced *with* or *without* leave. And there is no reason why the jurisdiction to give leave under sec. 74 of the Cty. Cts. Act, 1888, should not be exercised by the judge of the High Court in remitting the action under sec. 65. (*Burkill* v. *Thomas* (1892), 1 Q. B. 99. 312; *Curtis* v. *Storin*, 22 Q. B. D. 513; *Parsons* v. *Lakenheath School Board*, *County Courts Chronicle*, 1 June, 1889, p. 127.)

"**For either Party.**"—This follows the words of the Cty. Cts. Act. 1856, instead of those of the Act of 1867, which limits the application to the "defendant."

"**Costs.**"—See (nn.) "Unless the High Court," &c., *supra*, p. 568; and "Remitted Action." *supra*, p. 569.

Parties.—The ruling in *Harris* v. *Judge*. (1892) 2 Q. B. 565. applies generally to a remitted action, and where a change of parties occurs after remission the County Court judge must deal with it. The High Court has no jurisdiction. (*Duke* v. *Davis*, (1893) 2 Q. B. 197, 260.)

Form of Order.—See App. K., No. 44. Pt. I., *ante*.

When jurisdiction of High Court ceases.—The order to remit does not by itself terminate the jurisdiction of the High Court. Until the plaintiff lodges with the County Court Registrar the original writ and order to remit, the High Court retains jurisdiction over the action. (*Wrigley* v. *Buhl*, 3 Q. B. D. 80, 253; *D'Errico* v. *Samuel* (1896), 1 Q. B. 163.) And where between the order to remit and the lodging of the papers in the County Court, an order was made in the High Court to add as plaintiff the trustee in bankruptcy of the plaintiff firm, it was held that the County Court on receiving the action had no power to order the added plaintiff to give security for costs under sec. 94 of the County Courts Act, 1888. (*Hemming* v. *Davies*, (1898) 1 Q. B. 660.)

If the plaintiff makes undue delay in thus setting down the action in the County Court the defendant should apply by summons to a Master to compel him either to abandon or proceed with the action (*David* v. *Howe*, 27 C. D. 533; *Reg.* v. *Holroyd*, 32 W. R. 370; *Driscol* v. *King*, 49 L. T. 599); or he may obtain an office copy of the order, and apply to the central office to transmit to the County Court the filed duplicate of the writ.

"**Costs.**"—When once a case is remitted hereunder, all original jurisdiction in the H. Ct. is at an end, and any exercise of it is void. A judge of the H. Ct. has therefore no power after remission to deal with the costs prior to the order remitting the action, nor to fix the scale on which they are to be allowed; sec. 116 gives him no power to make any order as to costs in a remitted action which are under the control of the County Court judge. (*Harris* v. *Judge*, (1892) 2 Q. B. 565.) If the action is one which could have been commenced in a County Court,

C. C. Act, 1888, ss. 65, 66.

the costs must be dealt with in the County Court subject to the terms of sec. 116, *supra*. If it could not have been commenced in a County Court, this section fixes the scales of costs on which the registrar must tax. See sec. 116, *supra*, (n.) "Remitted Action," p. 569, and cases there cited.

Costs up to order to remit.—See (n.) "Remitted Action," p. 569.

Security for Costs.—See *Hemming* v. *Davies*, (1898) 1 Q. B. 660, *supra*.

Interpleader.—As to transfer of, to County Court, J. A. 1884, s. 17.

Actions of tort in High Court may be remitted to County Court.
30 & 31 Vict. c. 142, s. 10.

66. It shall be lawful for any person against whom an action of tort is brought in the High Court to make an affidavit that the plaintiff has no visible means of paying the costs of the defendant should a verdict be not found for the plaintiff; and thereupon a Judge of the High Court shall have power to make an order that, unless the plaintiff shall, within a time to be therein mentioned, give full security for the defendant's costs to the satisfaction of one of the Masters of the Supreme Court, or satisfy a Judge of the High Court that he has a cause of action fit to be prosecuted in the High Court, all proceedings in the action shall be stayed, or in the event of the plaintiff being unable or unwilling to give such security, or failing to satisfy a Judge as aforesaid, that the action be remitted for trial before a Court to be named in the order, and thereupon the plaintiff shall lodge the original writ and the order with the Registrar of such Court, who shall appoint a day for the hearing of the action, notice whereof shall be sent by post or otherwise by the Registrar to both parties or their solicitors; and the action and all proceedings therein shall be tried and taken in such Court as if the action had originally been commenced therein; and the costs of the parties in respect of the proceedings subsequent to the order of the Judge of the High Court shall be allowed according to the scale of costs for the time being in use in the County Courts, and the costs of the order and all proceedings previously thereto shall be allowed according to the scale of costs for the time being in use in the Supreme Court.

See J. A. 1873, s. 67, and (n.), *ante*.

This section is substituted by the Cty. Cts. Act, 1888, for s. 10 of Cty. Cts. Act, 1867. As to application of this section to the Liverpool Court of Passage, see 56 & 57 Vict. c. 37.

"**An Action of Tort.**"—(See (n.) "Tort," p. 566, *supra*.)—*Counterclaim.*—A counterclaim is not within the language of this section. So where a plaintiff claimed for debt and defendant counterclaimed for slander, and plaintiff's claim was stayed by defendant's bankruptcy, held that defendant's counterclaim could not be remitted hereunder (*Delobbel-Flipo* v. *Varty*, (1893) 1 Q. B. 663), but cf. *Guilford* v. *Lambeth*, (1894) 2 Q. B. 832, and *Morgan* v. *Bullen*, 11 Times Rep. 153, cited *supra*, p. 572, (n.) "Claim indorsed on Writ." An action of trover was held to be an action of tort within the repealed section. (*Clapham* v. *Oliver*, 30 L. T. 365.)

"**An Affidavit.**"—There must be an affidavit that the plaintiff has no visible means, &c. Even though both parties consent to the remission the order to remit can only be made on affidavit. (*Reg.* v. *Judge of Marylebone Cty. Ct.*, 50 L. T. 97.)

"**Visible means.**"—*E.g.*, such means as could be fairly ascertained by a reasonable person in the position of defendant. It does not mean merely "tangible means," the judge must satisfy himself whether the plaintiff has any means. (*Lea* v. *Parker*, 13 Q. B. D. 835.)

"**As if the Action had originally been commenced.**"—When once an action is remitted, it becomes a County Court action, and nothing is left in the High Ct. So where there is a change of parties in a remitted

C. C. Act, 1888, s. 66.

action requiring an order, the High Ct. has no jurisdiction to make it (*Duke* v. *Davis*, (1893) 2 Q. B. 107, 260, following by analogy *Harris* v. *Judge*, (1892) 2 Q. B. 565; and see (n.) "Remitted Action," *supra*, p. 569); but the County Court judge has full power to do so. (*Reg.* v. *Judge of Clerkenwell Cty. Ct.*, 35 Sol. Jo. 25.)

Slander.—*J. A.* 1873, *s.* 67.—A Cty. Ct. has not original jurisdiction in malicious arrest, libel, slander, and seduction, see Cty. Cts. Act, 1846, s. 58; but see s. 56 of Cty. Cts. Act, 1888, which omits "malicious arrest." But any of these actions might have been remitted to a Cty. Ct. under the repealed section, although an action in respect of them could not be commenced there. (*Stokes* v. *S.*, 19 Q. B. D. 419 (C. A.).) See (n.) "Practice," p. 566.

"And thereupon a judge," &c., "shall have power," &c.—Under the repealed section the judge was held to have a judicial discretion. (*Lea* v. *Parker*, 13 Q. B. D. 835.) Any judge at chambers had power to make an order under the repealed section. (*Owens* v. *Woosman*, 3 Q. B. 469.) So also had a master (*Walsh* v. *Smith*, 30 L. T. 304; O. 54, r. 12), to whom the application hereunder and under s. 65 is now always made; and the judge of the county court could not inquire into the circumstances under which the order was made (*Blades* v. *Lawrence*, 9 Q. B. 374). The county court judge had jurisdiction to order all proceedings in an action remitted to the county court under this section to be stayed until payment by the plaintiff of the costs remaining unpaid of a previous action in the High Court raising substantially the same question. (*Reg.* v. *Bayley*, 8 Q. B. D. 411.) He could not add a dft. against his will. (*Mullencisen* v. *Coulson*, 20 Q. B. D. 667.) As to appeals, see J. A. 1873, s. 45 (n.), Cty. Cts. Act, 1888, Pt. III.

"And thereupon the Plaintiff shall lodge," &c.—See (n.) "When High Court jurisdiction ceases," *infra*, and P. M. R. (1), Vol. I., Pt. II.

"Fit to be prosecuted in High Court."—That is, the plaintiff must show that the action is more fit to be tried in the H. C. than in the Cty. Ct., *Furrer* v. *Lowe*, 5 Times Rep. 234, and compare *Banks* v. *Hollingsworth*, (1893) 1 Q. B. 442. Where the action was by a woman for an imputation upon her chastity, it was held to come within these words (of the repealed section). (*Critchley* v. *Brown*, 2 Times Rep. 238.) And see, as to action of libel, *Williams* v. *Morris*, 10 Times Rep. 603.

Form of conditional order to remit.—Where an order is made for judgment for part of the claim, and the residue remitted, it is better that the order should run thus: "And after payment of that sum or after judgment for the same this action as to the residue be remitted," &c., otherwise, if the defendant abandons his defence as to the residue, it is doubtful whether the High Ct. retains jurisdiction to deal with the costs. See remarks of Cave, J. (*Keeble* v. *Bennett*, 71 L. T. p. 248.)

When High Court jurisdiction ceases.—An order to remit unless security given within a certain time does not terminate the jurisdiction of the High Court. A Master has power to extend the time. (*Welply* v. *Buhl*, 3 Q. B. D. 80, 253.) The action in fact remains under the jurisdiction of the High Court until the plaintiff lodges the writ and order to remit with the County Court Registrar. (*D'Errico* v. *Samuel*, (1896) 1 Q. B. 163.) If the plaintiff neglects to set down the action in the County Court, the defendant should apply by summons to a Master to compel him to do so or abandon the action (*David* v. *Howe*, 27 C. D. 533; *Reg.* v. *Holroyd*, 32 W. R. 370; *Driscol* v. *King*, 49 L. T. 599), or he may obtain an office copy of the order to remit and apply to have the duplicate writ on the file of the central office transmitted to the County Court, which in some County Courts is accepted as sufficient, and should be so accepted in all.

Costs.—See (nn.) "Unless the High Court," &c., *supra*, p. 568, and "Remitted Action," *supra*, p. 569.

Interpleader.—May be remitted to County Court, see J. A. 1884, s. 17.

C. C. Act, 1888, s. 69.

Transfer to county courts of equitable actions or matters.

30 & 31 Vict. c. 142, s. 8.

69. Where any action or matter is pending in the Chancery Division of the High Court which might have been commenced in a Court under this Act, it shall be lawful for any of the parties thereto to apply at Chambers to the Judge of the said Division to whom the said action or matter is attached to have the same transferred to the Court or one of the Courts in which the same might have been commenced, and such Judge shall have power upon such application, or without such application, if he shall think fit, to make an order for such transfer, and thereupon such action or matter shall be carried on in the Court to which the same shall be ordered to be transferred, and the parties thereto shall have the same right of appeal as they would have had if the action or matter had been commenced in such Court.

This section is substituted by Cty. Cts. Act, 1888, for s. 8 of Cty. Cts. Act, 1867. See J. A. 1873, s. 67.

Note on repealed Section.—Where a transfer was made under the repealed section, the superior court retained its jurisdiction in the action until the transfer had been completed by all necessary steps for that purpose. (*David* v. *Howe*, 27 C. D. 533.) See also County Court Rules, 1886, O. 33, r. 8. As to jurisdiction, see *Linford* v. *Gudgeon*, L. R. 6 Ch. 359.

Interpleader.—Transfer of, to Cty. Ct. ; J. A. 1884, s. 17, *supra*.

"**Might have been Commenced.**"—See (n.) "Practice," *supra*, p. 566, and (nn.) "An Action of Tort," p. 574, and "Tort," p. 566.

"**If he shall think fit.**"—The power is discretionary, and though the amount may be comparatively small the court will not necessarily order a transfer in the absence of any special reason. (*Picard* v. *Hine*, 18 L. T. 705 ; and see *Sykes* v. *Firth*, 46 L. J. Ch. 627.)

Costs.—The order usually provides for the costs. If it does not, it is usual to allow costs on High Ct. scale down to the order to remit, and afterwards costs on the County Court scale.

Transfer to High Court.—Section 68 provides for transfer to the High Court of equitable actions and matters proceeding in the County Court where the subject exceeds the County Court jurisdiction. Such transfer is discretionary : see the terms of the section, and *Prangnell* v. *P.*, 62 L. J. Q. B. 346.

DIVISION II.

CERTAIN STATUTES AND RULES OF SUPREME COURT UNDER STATUTES.

SOLICITORS' REMUNERATION ACT, 1881.

(44 & 45 VICT. c. 44.)

An Act for making better provision respecting the Remuneration of Solicitors in Conveyancing and other non-contentious Business.

[22nd August, 1881.]

Preliminary.

Short title, extent, interpretation.

1.—(1.) This Act may be cited as the Solicitors' Remuneration Act, 1881.

As to the scheme of the statute and the Gen. Order, see *Parker* v. *Blenkhorn*, 14 App. Cas. p. 7.

The Gen. Order under this Act does not apply to a sale of land not situated in England : *Re Greville*, 40 C. D. 441.

(2.) This Act does not extend to Scotland.

(3.) In this Act—

"Solicitor" means a solicitor or proctor qualified according to the statutes in that behalf :

"Client" includes any person who, as a principal, or on behalf of another, or as trustee or executor, or in any other capacity, has power, express or implied, to retain or employ, and retains or employs, or is about to retain or employ, a solicitor, and any person for the time being liable to pay to a solicitor, for his services, any costs, remuneration, charges, expenses, or disbursements :

"**Client.**"—See *Re Allen*, 34 C. D. 433 ; *Hester* v. *H.*, 34 C. D. 607 ; solicitor acting for mortgagor and mortgagee : *Re Palmer*, 45 C. D. 291. *Semble*, two trustees make but one "client," see *Re Metcalfe*, cited Gen. Order, r. 6. Country solicitor and London agent, *Ward* v. *Eyre*, 15 C. D. 130 ; *Ward* v. *Lawson*, 43 C. D. 353 ; *Re Maud*, 34 Sol. Jo. 709.

"Person" includes a body of persons corporate or unincorporate :

"Incorporated Law Society" means, in England, the society referred to under that title in the Act passed in the session

29 & 30 Vict. c. 84.

of the twenty-third and twenty-fourth years of Her Majesty's reign, intituled "An Act to amend the Laws relating to Attorneys, Solicitors, Proctors, and Certificated Conveyancers"; and, in Ireland, the society referred to under that title in the Attorneys and Solicitors Act, Ireland, 1866:

"Provincial law societies or associations" means all bodies of solicitors in England incorporated by Royal Charter, or under the Joint Stock Companies Act, other than the Incorporated Law Society above mentioned.

General Orders.

Power to make general orders for remuneration in conveyancing, &c.

2. In England, the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, and the president for the time being of the Incorporated Law Society, and the president of one of the provincial law societies or associations, to be selected and nominated from time to time by the Lord Chancellor to serve during the tenure of office of such president, or any three of them, the Lord Chancellor being one, and, in Ireland, the Lord Chancellor, the Lord Chief Justice of Ireland, the Master of the Rolls, and the president for the time being of the Incorporated Law Society, or any three of them, the Lord Chancellor being one, may from time to time make any such general order as to them seems fit for prescribing and regulating the remuneration of solicitors in respect of business connected with sales, purchases, leases, mortgages, settlements, and other matters of conveyancing, and in respect of other business not being business in any action, or transacted in any Court, or in the chambers of any judge or master, and not being otherwise contentious business, and may revoke or alter any such order

See Gen. Order, *infra*, p. 582.

The scheme of the statute and Gen. Order is that in respect of certain specific business coming within the scales, the remuneration is fixed; but the scales are not exhaustive, and business not within them is to be paid for according to old system as altered by Schedule 2: see *Parker* v. *Blenkhorn*, *Newbould* v. *Bailward*, 14 App. Cas. 1; *Re Reade*, 33 Sol. Jo. 219: *Mawdsley* v. *Beesley*, 36 Sol. Jo. 63. But the payment must be according to scale or independently of scale, and cannot in respect of one and same piece of work be entitled to a compound remuneration: *Re Robson*, 45 C. D. 71.

"**Not being business in any Action.**"—See remarks of Kay, J., hereon in *Stanford* v. *Roberts*, 26 C. D. 157; and compare Gen. Order, r. 2, *infra*, and cases there cited.

Communication to Incorporated Law Society.

3. One month at least before any such general order shall be made, the Lord Chancellor shall cause a copy of the regulations and provisions proposed to be embodied therein to be communicated in writing to the Council of the Incorporated Law Society, who shall be at liberty to submit such observations and suggestions in writing as they may think fit to offer thereon; and the Lord Chancellor, and the other persons hereby authorised to make such order, shall take into consideration any such observations or suggestions which may be submitted to them by the said council within one month from the day on which such communication to the said council shall have been made as aforesaid, and, after duly considering the same, may make such order, either in the form

or to the effect originally communicated to the said council, or with such alterations, additions, or amendments, as to them may seem fit.

Principles of remuneration.

4. Any general order under this Act may, as regards the mode of remuneration, prescribe that it shall be according to a scale of rates of commission or per-centage, varying or not in different classes of business, or by a gross sum, or by a fixed sum for each document prepared or perused, without regard to length, or in any other mode, or partly in one mode and partly in another, or others, and may, as regards the amount of the remuneration, regulate the same with reference to all or any of the following, among other, considerations; (namely,)

The position of the party for whom the solicitor is concerned in any business, that is, whether as vendor or as purchaser, lessor or lessee, mortgagor or mortgagee, and the like:

The place, district, and circumstances at or in which the business or part thereof is transacted:

The amount of the capital money or of the rent to which the business relates:

The skill, labour, and responsibility involved therein on the part of the solicitor:

The number and importance of the documents prepared or perused, without regard to length:

The average or ordinary remuneration obtained by solicitors in like business at the passing of this Act.

The specific provisions of rule 2 of Sched. I., Part I., may take a case out of this section, as in *Re Wilson*, 29 C. D. 790; and see r. 11.

Security for costs, and interest on disbursements.

5. Any general order under this Act may authorise and regulate the taking by a solicitor from his client of security for future remuneration in accordance with any such order, to be ascertained by taxation or otherwise, and the allowance of interest.

See Gen. Order, r. 7, *infra*.

Order to be laid before houses of parliament; disallowance on address.

6.—(1.) Any general order under this Act shall not take effect unless and until it has been laid before each House of Parliament, and one month thereafter has elapsed.

(2.) If within that month an address is presented to the Queen by either House, seeking the disallowance of the order, or part thereof, it shall be lawful for Her Majesty, by Order in Council, to disallow the order, or that part, and the order or part disallowed shall not take effect.

Effect of order as to taxation.

7. As long as any general order under this Act is in operation, the taxation of bills of costs of solicitors shall be regulated thereby.

Cf. *Re Field* and other cases cited, Gen. Order, r. 11, *infra*.

By virtue of this section the Gen. Order under the Act is applicable to business completed before Jan. 1, 1883. *Re Stewart*, 41 C. D. 494.

So long as the Gen. Order (which see *infra*) is in operation, the taxation of a solicitor's bill of costs must be regulated thereby, and the Court has no discretion to depart from the terms thereof, *per* Fry, L.J., *Earl of Aylesford* v. *Earl Poulett*, (1891) 1 Ch. p. 248.

See *Re Inderwick*, cited s. 8, *infra*.

Agreements.

Power for solicitor and client to agree on form and amount of remuneration.

8.—(1.) With respect to any business to which the foregoing provisions of this Act relate, whether any general order under this Act is in operation or not, it shall be competent for a solicitor to make an agreement with his client, and for a client to make an agreement with his solicitor, before or after or in the course of the transaction of any such business, for the remuneration of the solicitor, to such amount and in such manner as the solicitor and the client think fit, either by a gross sum, or by commission or percentage, or by salary, or otherwise; and it shall be competent for the solicitor to accept from the client, and for the client to give to the solicitor, remuneration accordingly.

"**Business . . to which . . this Act.**" &c.—See s. 2.

"**Client.**"—See s. 1 (3), *supra*, and *Re Palmer*, 45 C. D. 291.

"**To make an Agreement.**"—This section does not affect the law as laid down in *Simpson* v. *Lamb*, 26 L. J., Q. B. 121, which the Court will always insist on, namely, that a solicitor cannot make any arrangement of any kind with his client during the litigation which he is conducting so as to give himself any advantage in respect of that litigation (*Davis* v. *Freethy*, 24 Q. B. D. p. 523: *Pittman* v. *Prudential, &c.*, 13 Times Rep. 110). See *Re Druce*, 94 L. T. Jo. 583, where there was a suspicion of fraudulent preference and the Court ordered a bill to be delivered.

Agreements within The Attorneys and Solicitors Act, 1870, s. 4.—See *Pontifex* v. *Farnham*, 41 W. R. 238; *Re Stuart*, (1893) 2 Q. B. 201; *Re Thomas*, (1893) 1 Q. B. 670; *Re Thompson*, (1894) 1 Q. B. 462; *Re Jones*, (1895) 2 Ch. 719; *Re Steel*, 39 Sol. Jo. 710. Costs of business done in Police Courts and Quarter Sessions are taxable in the usual way, and if they are the subject of an agreement such agreement may be looked into and set aside by a judge of the High Court, *Re Jones*, (1896) 1 Ch. 222.

(2.) The agreement shall be in writing, signed by the person to be bound thereby or by his agent in that behalf.

The agreement need not be signed by both parties, but only by the party to be charged, *Re Frape*, (1893) 2 Ch. 284. As to what amounts to a signature, see *Ibid.*

All the terms of the agreement must be found in the document itself, *Re Frape*, *supra*.

See further *Re Lewis*, 1 Q. B. D. 724; *Re Raven*, 45 L. T. 742; *Re West, King & Co.*, (1892) 2 Q. B. p. 106; *Re Baylis*, (1896) 2 Ch. 107.

(3.) The agreement may, if the solicitor and the client think fit, be made on the terms that the amount of the remuneration therein stipulated for either shall include or shall not include all or any disbursements made by the solicitor in respect of searches, plans, travelling, stamps, fees, or other matters.

(4.) The agreement may be sued and recovered on or impeached and set aside in the like manner and on the like grounds as an agreement not relating to the remuneration of a solicitor; and if,

under any order for taxation of costs, such agreement being relied upon by the solicitor shall be objected to by the client as unfair or unreasonable, the taxing master or officer of the Court may inquire into the facts, and certify the same to the Court; and if, upon such certificate, it shall appear to the Court or judge that just cause has been shown either for cancelling the agreement, or for reducing the amount payable under the same, the Court or judge shall have power to order such cancellation or reduction, and to give all such directions necessary or proper for the purpose of carrying such order into effect, or otherwise consequential thereon, as to the Court or judge may seem fit.

"**Under any Order for Taxation.**"—Although the Court has power to refer an agreement within the section to the taxing master, if impeached, on the ground that it is unfair and unconscionable, yet such an order should not be made if unsupported by evidence leading to such conclusion. See *Re Palmer*, 45 C. D. 291; *Re Frape*, (1893) 2 Ch. 284. See *Re Druce*, 94 L. T. Jo. 383, where the Court on suspicion of fraudulent preference ordered a solicitor to deliver a bill.

Where an agreement has been made for the remuneration of a solicitor, and the solicitor alleges the remuneration was for non-professional work, the person chargeable cannot obtain the common ex parte order for delivery and taxation. This section has made no difference in the practice in this respect, *Re Inderwick*, 25 C. D. 279; *Re Ames*, 25 C. D. 73; *Re Herbert*, 34 C. D. 504; *Re Jones*, 36 C. D. 105.

A true "bill" may be delivered where the scale applies by merely stating one scale item: but such bill would seem not to be conclusive against the client, see *Re Baylis*, (1896) 2 Ch.107.

Cf. further on the sub-section *Re Gray*, 30 Sol. Jo. 551: *Re Montagne Scott*, W. N. (89) 40; *Means* v. *Knapp*, 37 W. R. 585; *Re West, King & Co.*, (1892) 2 Q. B. p. 196.

9. The Attorneys and Solicitors Act, 1870, shall not apply to any business to which this Act relates. Restriction on Solicitors Act, 1870.

GENERAL ORDER

MADE IN PURSUANCE OF

THE SOLICITORS' REMUNERATION ACT, 1881.

(44 & 45 VICT. c. 44.)

WE, The Right Honourable Roundell Baron Selborne, Lord High Chancellor of Great Britain, The Right Honourable John Duke Lord Coleridge, Lord Chief Justice of England, The Right Honourable Sir George Jessel, Master of the Rolls, and Enoch Harvey, Esquire, President of the Incorporated Law Society of Liverpool (being four of the persons in that behalf authorised by the Statute 44th and 45th Victoria, chapter 44), do hereby, in pursuance and execution of the powers given to us by the said Statute, and of all other powers and authorities enabling us in that behalf, order and direct in manner following :—

1. This order is to take effect from and after the 31st day of December, 1882, except that Schedule I. hereto shall not apply to transactions respecting real property, the title to which has been registered under the Acts of 25 & 26 Vict. cap. 53, 25 & 26 Vict. cap. 67, and 38 & 39 Vict. cap. 87.

This order does not apply to a sale of land not situated in England, *Re Greville*, 40 C. D. 441. As to its effect on taxation, see Solicitors' Remuneration Act, s. 7 (n.), *supra*.

In *Re Lacey*, 25 C. D. 301, an option to purchase was exercised in December, 1882. No abstract required : completion fixed for 25th March, but for purchaser's convenience, completed on 14th of February. Held, the scale applied.

In *Re Field*, 29 C. D. 608, negotiations for a lease had been going on since August, 1880. In October, 1883, the lease was executed. Held, scale charge applied, there not having been any election under r. 6, *infra* ; and see *Re Hickley*, 33 W. R. 320.

In *Re Denne and Secretary of State, &c.*, 33 W. R. 120, a contract to sell was made June, 1882, by which purchaser was to pay all reasonable costs, &c. In December, 1882, the vendor changed his solicitor, and in April, 1883, employed a London solicitor. Held, following *Re Lacey*, *supra*, the Gen. Order applied.

As to conveyancing business begun before but finished after the 31st of December, the G. O. applies. *Fleming* v. *Hardcastle*, 33 W. R. 776.

2. Subject to the exception aforesaid, the remuneration of a solicitor in respect of business connected with sales, purchases, leases, mortgages, settlements and other matters of conveyancing, and in respect of other business, not being business in any action, or transacted in any Court, or in the chambers of any judge or master, is to be regulated as follows, namely :—

"**Business connected with.**"—See *Re Field; Re Emanuel & Simmonds*, 33 C. D. 40 ; approved in *Savery* v. *Enfield Local Board*, (1893) A. C. 218 ; *Re Allen; Re Martin*, cited Sched. 1, Pt. 2 ; *Newbould* v. *Bailward*, 14 App. Cas. 1 ; Sched. 1, *Ex parte Harris*, 36 W. R. 592 ; *Re Purcell*, 91 L. T. Jo. 293.

"**Matters of Conveyancing.**"—That is, conveyancing business in an action equally with other conveyancing. *Fleming* v. *Hardcastle*, 33 W. R. 776 ; *Stanford* v. *Roberts*, 26 C. D. 155 ; *Humphreys* v. *Jones*, 31

C. D. 33; *Re Merchant Taylors' Co.*, 30 C. D. 28; and see Sol. Rem. Act, s. 2, *supra*.

The charges of a solicitor in respect of sales under a small bankruptcy are taxable hereunder, and not under Bankruptcy Rules (86), r. 112, s. 2. *Re Parfitt*, 23 Q. B. D. 40.

(*a.*) In respect of sales, purchases, and mortgages completed, the remuneration of the solicitor having the conduct of the business, whether for the vendor, purchaser, mortgagor, or mortgagee, is to be that prescribed in Part I. of Schedule I. to this order, and to be subject to the regulations therein contained.

See Schedule 1, Part 1, p. 586.

"**Completed.**"—Cf. *Re Read*, (1894) 3 Ch. 238; *Re Bircham*, *infra*; *Re Baillie*, 15 Times Rep. 277.

(*b.*) In respect of leases, and agreements for leases, of the kinds mentioned in Part II. of Schedule I. to this order, or conveyances reserving rent, or agreements for the same, when the transactions shall have been completed, the remuneration of the solicitor having the conduct of the business is to be that prescribed in Part II. of such Schedule I.

See Schedule 1, Part 2, p. 592. and *Re Martin*, 41 C. D. 381; *Sarery, &c.* v. *Enfield L. B.*, (1893) A. C. 218; *Re Negus*, (1895) 1 Ch. 73.

(*c.*) In respect of business not hereinbefore provided for, connected with any transaction, the remuneration for which, if completed, is hereinbefore, or in Schedule I. hereto, prescribed, but which is not, in fact, completed, and in respect of settlements, mining leases or licences, or agreements therefor, re-conveyances, transfers of mortgage, or further charges, not provided for hereinbefore or in Schedule I. hereto, assignments of leases not by way of purchase or mortgage, and in respect of all other deeds or documents, and of all other business the remuneration for which is not hereinbefore, or in Schedule I. hereto prescribed, the remuneration is to be regulated according to the present system as altered by Schedule II. hereto.

See Schedule 2., p. 595.

This sub-section (c) comprises all the business referred to in the introductory words to the rule, which is not included in sub-secs. (a) and (b). *Humphreys* v. *Jones*, 31 C. D. 33 (C. A.).

"**Business . . . not . . . completed.**"—*Re Dean*, 32 C. D. 209, cited Sched. 1, r. 2, *infra*; *Re Martin*, 41 C. D. 381; *Re Smith, Pinsent & Co.*, 44 C. D. 303; *Re Bircham*, (1895) 2 Ch. 786; *Re Baillie*, 15 Times Rep. 277.

"**All other Business.**"—Cf. *Parker* v. *Blenkhorn*; *Newbould* v. *Bailward*, 14 App. Cas. 1, cited Sched. 2, *infra*; *Burd* v. *B.*, 40 C. D. 628; *Mawdsley* v. *Beesley*, 36 Sol. Jo. 63, cited r. 11, *infra*. As to profit costs, *Re Corsellis*, 31 W. R. 414, and (n.). p 371, *ante*. Perusal and completion of purchase chargeable under Sched. 2, *Re Lacey*, 25 C. D. 302; *Re Read*, (1894) 3 Ch. 238; *Re Hickley*, 33 W. R. 320, cited Schedule 1, Part 1,

infra. In a partition action the solicitor of the plaintiff, the vendor, will have his costs under Schedule 1, Part 1, and the defendants will have theirs under sub-sec. (c). *supra*. *Humphreys* v. *Jones*, 31 C. D. 33 : see *Re Webb*, (1897) 1 Ch. p. 150.

The costs of an attempted but ineffectual sale, when there is no chance of the sale being effected for years to come, should be taxed hereunder (*Re Smith, Pinsent & Co.*, 44 C. D. 303).

3. Drafts and copies made in the course of business, the remuneration for which is provided for by this order, are to be the property of the client.

4. The remuneration prescribed by Schedule I. to this order is not to include stamps, counsel's fees, auctioneer's or valuer's charges, travelling or hotel expenses, fees paid on searches to public offices, on registrations, or to stewards of manors, costs of extracts from any register, record, or roll, or other disbursement reasonably and properly paid, nor any extra work occasioned by changes occurring in the course of any business, such as the death or insolvency of a party to the transaction, nor is it to include any business of a contentious character, nor any proceedings in any Court, but it shall include law stationer's charges, and allowances for time of the solicitor and his clerks, and for copying and parchment, and all other similar disbursements.

See also r. 11, *infra*, and remarks of Lindley, L.J., in *Re Wilson*, 29 C. D. p. 798; also rr. 2 and 12. *Semble*, this rule deals with out-of-pocket expenses and nothing else. (*Per* Chitty, L.J., *Grey* v. *Curtice*, *infra*.)

Agreement for Lease.—See Sched. 1, Pt. 2, and *Savery* v. *Enfield L. B.*, (1893), A. C. 218; *Re Negus*, (1895) 1 Ch. 73.

"**On Registrations.**"—The cost of registering a memorial of land in a registered county is (other than money out of pocket) included in the scale fee for "preparing and completing conveyance." Sched. 1, *infra*; *Grey* v. *Curtice*, (1899) 1 Ch 121.

"**Auctioneers' charges.**"—*Burd* v. *B.*, 40 C. D. 628; judgment of North, J., in *Peace* v. *Ellis*, 36 W. R. p. 60; Art. 91 L. T. 25; *Drielsma* v. *Manifold*, (1894) 3 Ch. 100.

"**Law stationer's charges.**"—A copy of a plan on a conveyance which does not require preparation by a surveyor is within these words, *Re Read*, (1894) 3 Ch. 238.

5. In respect of any business which is required to be, and is, by special exertion, carried through in an exceptionally short space of time, a solicitor may be allowed a proper additional remuneration for the special exertion, according to the circumstances.

6. In all cases to which the scales prescribed in Schedule I. hereto shall apply, a solicitor may, before undertaking any business, by writing under his hand, communicated to the client, elect that his remuneration shall be according to the present system as altered by Schedule II. hereto; but if no such election

shall be made, his remuneration shall be according to the scale prescribed by this order.

See Schedule 2., p. 595.

"**Before undertaking any Business.**"—*Pending Business.*—Where negotiation for a lease commenced in 1880, and the lease was granted in April, 1883, *quære* whether there could have been election hereunder, when the rules came into force (r. 1, *supra*), *Re Field*, 29 C. D. 608; *Re Love*, 40 C. D. 637; *Re Stewart*, *infra*. And cf. Solicitors' Remuneration Act, s. 7, p. 579, *supra*.

These words mean doing something for which the solicitor is entitled to *charge* a fee whether under order or not, *Re Stewart*, 41 C. D. 494, distinguished *Re Earnshaw-Wall*, (1894) 3 Ch. 156.

Sending in a bill drawn out according to the old system, is not election. *Fleming* v. *Hardcastle*, 33 W. R. 776.

These words seem to mean "before beginning the work" (34 C. D. 437). It is essential that the election be made before the business is undertaken. After a solicitor has accepted the employment, and done any work *for which he could charge* if the scale did not apply, it is too late to elect. *Re Allen*, 34 C. D. 433; *Hester* v. *H.*, 34 C. D. 607; *Re Stewart*, *supra*.

"**By writing—communicated—elect.**"—Where a notice to elect is *properly given hereunder* to a mortgagee, it is binding on subsequent incumbrancer and mortgagor. *Hester* v. *H.*, 34 C. D. 607; and see *Re Allen*, *supra*; and as to re-investment under Land Clauses Act, *Re Bridewell Hospital*, 57 L. T. 155.

Order for sale in administration action, May, 1886. The solicitor of two defendant trustees having conduct, wrote to the trustee in June electing hereunder. It appeared that in March there had been a summons for sale, and a conference as to mode of conducting it. Held, election was too late. *Semble*, notice should have been given *to both* trustees, who together made up the "client." *Re Metcalfe*, 36 W. R. 137, and see *Re Rackham*, W. N. (89) 214.

Official Liquidator.—If solicitor employed by O. L. in winding up gives notice hereunder, the O. L. should apply for direction of judge as to continuing him. *Re United Kingdom, &c., Association*, 40 C. D. 471.

Meaning of Notice.—See last case, judgment of Chitty, J., at p. 474.

"**But if no such election.**"—If solicitors do not avail themselves of this Act, they become entitled to remuneration according to the existing system as altered by Sched. II., *except* in case of professional work to which Sched. I. applies, and for which a scale fee is payable in terms of that schedule, *per* Lord Watson, in *Parker* v. *Blenkhorn*; *Newbould* v. *Bailward*, 14 App. Cas. 10; *Mawdsley* v. *Beesley*, 36 Sol. Jo. 63.

7. A solicitor may accept from his client, and a client may give to his solicitor, security for the amount to become due to the solicitor for business to be transacted by him, and for interest on such amount, but so that interest is not to commence till the amount due is ascertained, either by agreement or taxation. A solicitor may charge interest at 4 per cent. per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from demand from the client. And in cases where the same are payable by an infant, or out of a fund not presently available, such demand may be made on the parent or guardian, or the trustee or other person liable.

See Sol. Rem. Act, s. 5, p. 579, *supra*; Ibid. s. 8, p. 580 and (n.); and (n.) "Profit Costs," *supra*, p. 371.

"**Interest.**"—A solicitor delivered his bill to a client without claiming interest. Bill was taxed and amount paid. Solicitor thereupon claimed interest at £4 per cent. on amount of bill from one month from date of delivery. Held, he was entitled. *Blair* v. *Cordner*, 19 Q. B. D. 516.

Administration Action.—Costs were directed to be taxed and paid out of the estate and balance divided amongst beneficiaries. Interest is not payable on such costs unless specially directed. *Re Marsden*, 40 C. D. 475; and cf. O. 41. r. 3; O. 42, r. 16.

"**Person liable.**"—Where a client has died the bill must be delivered to his legal personal representative in order to bring the case within this rule. *Re McMurdo*, (1897) 1 Ch. 119.

8. In this order, and the schedules hereto, the following words and expressions shall have the meaning ascribed to them in the 3rd sub-section of Section I. of the Solicitors' Remuneration Act, 1881, viz.:—

Solicitor,
Client,
Person.

See Solicitors' Remuneration Act, sec. 1, p. 577, *supra*.

SCHEDULE I.

The taxing-master is obliged to apply the General Order in all cases in which it is applicable, *Re Negus*, (1895) 1 Ch. 73.

As to the scheme of the statute and G. O. see *Parker* v. *Blenkhorn*, 14 App. Cas. p. 7.

This schedule is not to apply to transactions respecting real property registered under 25 & 26 Vict. c. 53; 25 & 26 Vict. c. 67; and 38 & 39 Vict. c. 87. See Gen. Ord. r. 1, *supra*.

This schedule only applies where deducing title, perusing and completing, are all done. *Re Lacey*, 25 C. D. 302; *Fleming* v. *Hardcastle*, 33 W. R. 776; *Re Glascodine*, 52 L. T. 781; *Re Eley*, 37 C. D. 40; otherwise. Gen. Ord. r. 2 (c), applies.

This schedule does not apply to lands not situate in England. *Re Greville's Settlement* (land in Ireland). 40 C. D. 441.

Nor in the cases mentioned in G. O. clause 2 (c), p. 583.

PART I.

Scale of Charges on Sales, Purchases, and Mortgages, and Rules applicable thereto.

See Gen. Order, clause 2 (a), p. 583.

SCALE.

	(1.) For the 1st £1,000.	(2.) For the 2nd and 3rd £1,000.	(3.) For the 4th and each subsequent £1,000 up to £10,000.	(4.) For each subsequent £1,000 up to £100,000.*
	Per £100. s.	Per £100. s.	Per £100. s. d.	Per £100. s. d.
Vendor's solicitor for negotiating a sale of property by private contract	20	20	10 0	5 0
,, for conducting a sale of property by public auction (see r. 11, *infra*) including the conditions of sale—				
When the property is sold	20	10	5 0	2 6
When the property is not sold, then on the reserved price	10	5	2 6	1 3
[N.B.—A minimum charge of £5 to be made whether a sale is effected or not.]				

* Every transaction exceeding £100,000 to be charged for as if it were for £100,000.

Scale of Charges on Sales, &c.—continued.

	(1.) For the 1st £1,000.	(2.) For the 2nd and 3rd £1,000.	(3.) For the 4th and each subsequent 1,000 up to £10,000.	(4.) For each subsequent £1,000 up to £100,000.*
	Per £100. s.	Per £100. s.	Per £100. s. d.	Per £100. s. d.
Vendor's solicitor for deducing title to freehold, copyhold, or leasehold property, and perusing and completing conveyance (including preparation of contract or conditions of sale, if any) (See (n.) **A.** *infra.*)	30	20	10 0	5 0
Purchaser's solicitor for negotiating a purchase of property by private contract	20	20	10 0	5 0
„ for investigating title to freehold, copyhold, or leasehold property, and preparing and completing conveyance (including perusal and completion of contract, if any) . . (See (n.) **A.** *infra.*)	30	20	10 0	5 0
Mortgagor's solicitor for deducing title to freehold, copyhold, or leasehold property, perusing mortgage, and completing (See (n.) **B.** *infra.*)	30	20	10 0	5 0
„ for negotiating loan (See (n.) **B.** *infra.*)	20	20	5 0	2 6
„ for investigating title to freehold, copyhold, or leasehold property, and preparing and completing mortgage . . .	30	20	10 0	5 0
Vendor's or mortgagor's solicitor for procuring execution and acknowledgment of deed by a married woman	£2 10*s.* extra.			

Note.—When the *scale does not apply*, see Gen. Order, clause 2 (c), p. 583, the solicitor's remuneration in respect of business which would be covered by the scale fee, if the scale applied, is to be regulated according to the old system as altered by Sched. II., *per* Lord Macnaghten, *Parker* v. *Blenkhorn*, 14 App. Cas. 10.

(A.) Sales and Purchases.

"**Property.**"—Grants by way of sale of rights and easements of laying pipes in land, are not conveyances of property within this schedule, *Re Stewart*, 41 C. D. 494; and see *B*, *infra*, and *Re Coe*, *infra*.

Several lots.—Where several lots have a separate title and separate abstracts, the solicitor is entitled to the scale fee for each lot, *Re Margetts*, (1896) 2 Ch. 263. See rule 8, *infra*.

"**Negotiating.**"—See r. 11, p. 591, in *Grey's Brewery Co.*, 56 L. T. 298, an O. L. sold the interest of the Co. in certain property, he was only allowed the scale charge on the money received for the Co., not on the gross amount of the sale, and the negotiating fee was disallowed. See *Re Harris*, 56 L. T. 477; *Re Gallard*, 21 Q. B. D. 38; *ReReade*, 33 Sol. Jo. 219; and especially *Re Macgowan* (1891), 1 Ch. 105 (C.A.).

* Every transaction exceeding £100,000 to be charged for as if it were for £100,000.

In a partition action, an order was made for sale, costs of all parties out of proceeds. The plt.'s solicitor had conduct. Plt. owned ¼, the dft. ¾. The plt. is entitled to scale charges hereunder; the dft. to costs under rule 2, sub-s. (c). *Humphreys* v. *Jones*, 31 C. D. 31. *Semble*, the sale of a goodwill is not within the rule. *Re Coe*, 38 Sol. Jo. 421.

"**Conducting.**"—See r. 11, p. 591, as to conducting sale of property put up for sale under S. Land Act, and not sold: *Re Beck*, 24 C. D. 608; *Re Wilson*, 29 C. D. 790; *Burd* v. *B.*, 40 C. D. 634. Where on sale by auction the auctioneer's commission is paid by client (see r. 11, *infra*), the solicitor cannot hereunder, or under schedule 2, charge anything for "conducting:" *Parker* v. *Blenkhorn: Newbould* v. *Bailward*, 14 App. Cas. 1; *Mawdsley* v. *Beesley*, 36 Sol. Jo. 63; *Re Faulkner*, 36 C. D. 566; *Re Sykes*, 36 W. R. 234; *Parker* v. *Blenkhorn*, 14 App. Cas. 10. If the auctioneer and surveyor do most of the work, the solicitor does not "conduct" the sale hereunder, *Re Wilson*, *supra*. As to the commission on sale in lots, see r. 2, *infra*, and *Onward B. Soc.*, (1893) 1 Q. B. 16.

"**Deducing.**"—See *Parker* v. *Blenkhorn*, r. 11, *infra*; *Re Peace* v. *Ellis*, 36 W. R. 61; *Re Faulkner*, 36 C. D. 566; cf. also *Re Lacey*, *supra*, where the title was dispensed with; *Re Keeping, &c.*, 58 L. T. 679; and Gen. Ord. r. 2 (c), was held to apply. See also *Re Harris*, *infra*. *Welby* v. *Still*, (1895) 1 Ch. 526.

Perusing. — *Humphreys* v. *Jones*, *supra*. Where several solicitors, see *Smith* v. *Lancaster*, (1894) 3 Ch. 439.

"**Completing.**"—See *Re Read*, (1894) 3 Ch. 238; *Re Bircham*, (1895) 2 Ch. 786, *infra*, r. 11, p. 591; *Re Baillie*, 15 Times Rep. 277. The scale fee covers and includes costs (other than out of pocket, see Gen. Order, r. 4, *supra*) in respect of the registration of a memorial when the land is in a registered county. *Grey* v. *Curtice*, (1899) 1 Ch. 121.

"**Investigating.**"—In *Ex parte Mayor of London*, 34 C. D. 452, Kay, J., said there might be an investigation of title without abstract, and without evidence of title being furnished by vendor, and held that though the investigation might be, as in this case, almost nominal, still it was within the schedule; and cf. *Re Merchant Taylors, &c.*, 30 C. D. 28: *Fleming* v. *Hardcastle*, 33 W. R. 776; *Re Harris*, 56 L. T. 447, *contra*. A purchaser's solicitor having *prepared* a contract, is entitled to charge for it in addition to scale fee, *Fleming* v. *Hardcastle*, *supra*.

(B.) Mortgages.

"**Freehold, Copyhold and Leasehold Property.**"—This includes an advowson, *Re Earnshaw-Wall*, (1894) 3 Ch. 156. But not a grant of easements "de novo," *Re Stewart*, 41 C. D. 494, or the grant of any new right, *Re Sander's Settlement*, (1896) 1 Ch. 480, and see as to goodwill, *Re Coe*, 38 Sol. Jo. 421.

"**Loan.**"—"Loan" means mortgage, *D'Arcy* v. *White*, 31 L. R. Ir. 142. See *Re Furber*, (1898) 2 Ch. p. 542.

Loan not completed.—The costs of the preparation and execution of a debenture trust deed under which no debentures were issued should be taxed under G. O. rule 2 (c) (*Re Bircham*, (1895) 2 Ch. 786).

Where a solicitor mentioned to a borrower the name of a client, but a mortgage was arranged without further action on part of solicitor, he was held not entitled to "negotiating" fee hereunder. *Re Eley*, 37 C. D. 40; and see r. 11, *infra*.

Negotiating loan.—The scale fee to "mortgagee's solicitor for negotiating loan" is applicable to all cases of loans on mortgage, and is not confined to loans on mortgage of freehold, copyhold or leasehold property exclusively. *Re Furber*, (1898) 2 Ch. 538. An appeal was dismissed as being too late, W. N. (98) 160.

In *Re Pybus*, 35 C. D. 568, a solicitor was employed by H. to raise two sums on mortgage. He retained £127, and sent H. cheque for balance, £823. In his bill he charged the usual procuration fee

to mortgagee's solicitor for negotiating loan, and also "mortgagor's solicitor for negotiating loan." This was held to be sufficient ground for taxing bill a year after delivery, cf. *Re Glascodine*, 52 L. T. 781.

Transfer of Mortgage.—See r. 10, p. 590.

As to negotiating fee for transfer, cf. *Re Weddall*, 29 Sol. Jo. 85.

"**Deducing.**"—In *Welby* v. *Still*, (1899) 1 Ch. 526, the property consisted of leaseholds and the mortgagor's solicitor simply produced and delivered an abstract of the leases under which mortgagor held. Held not entitled to scale fee for "deducing."

RULES.

1. The commission for deducing title and perusing and completing conveyance on a sale by auction is to be chargeable on each lot of property, except that where a property held under the same title is divided into lots for convenience of sale, and the same purchaser buys several such lots and takes one conveyance, and only one abstract is delivered, the commission is to be chargeable upon the aggregate prices of the lots.

"**Commission.**"—See r. 2 and (n.), *infra*.

"**Each Lot.**"—If there are separate and distinct titles and abstracts, then the scale fee may be charged for each lot, *Re Margetts*, (1896) 2 Ch. 263.

"**Deducing.**"—See *Welby* v. *Still*, *supra*.

2. The commission on an attempted sale by auction in lots is to be chargeable on the aggregate of the reserved prices. When property offered for sale by auction is bought in and terms of sale are afterwards negotiated and arranged by the solicitor, he is to be entitled to charge commission according to the above scales on the reserved price where the property is not sold, and also one half of the commission for negotiating the sale. When property is bought in and afterwards offered by auction by the same solicitor, he is only to be entitled to the scale for the first attempted sale; and for each subsequent sale ineffectually attempted, he is to charge according to the present system, as altered by Schedule II. hereto. In case of a subsequent effectual sale by auction, the full commission for an effectual sale is to be chargeable in addition, less one half of the commission previously allowed on the first attempted sale. The provisions of this rule as to commission on sales or attempted sales by auction are to be subject to Rule 11.

Note.—See also r. 11, *infra*, and *Burd* v. *B.*, there cited.

"**Sale by Auction.**"—Settled property was put up for sale by auction by tenant for life under S. Land Act, 1882, but was withdrawn, and was sold by private contract same day. Held, solicitors were entitled to scale charge set out in Sched. I., Pt. I., for conducting, including conditions of sale; and to one charge for deducing title and completing the conveyance, including preparation of contract, and that a proper sum for the costs of mortgagees joining and for auctioneer's charges were also payable. *Re Beck*, 24 C. D. 609.

This rule applies only where the attempted ineffectual sale, and the subsequent effectual sale, are conducted by the same solicitors. If there is a change after the ineffectual sale the taxation must be under Gen. Order, r. 2 (c). *Re Dean*, 32 C. D. 209; *Re Martin*, 41 C. D. 381; *Re Smith, Pinsent & Co.*, 44 C. D. 303.

Where a sale had been attempted unsuccessfully, the solicitors were

held entitled to be paid their charges for such abortive sale, without waiting until a successful sale was effected (*ibid.*).

"**Lots.**"—See this (n), r. 2.

Commission.—If the property is divided into lots the commission is upon the aggregate sum realized by the whole, *Re Onward B. S.*, (1893) 1 Q. B. 16.

3. Where a solicitor is concerned for both mortgagor and mortgagee he is to be entitled to charge the mortgagee's solicitor's charges and one-half of those which would be allowed to the mortgagor's solicitor up to £5,000, and on any excess above £5,000, one-fourth thereof.

4. If a solicitor peruses a draft on behalf of several parties having distinct interests, proper to be separately represented, he is to be entitled to charge £2 additional for such party after the first.

5. Where a party, other than the vendor or mortgagor, joins in a conveyance or mortgage, and is represented by a separate solicitor, the charges of such separate solicitor are to be dealt with under the old system as altered by Schedule II. hereto.

Cf. *Re Baillie*, 15 Times Rep. 277.

6. Where a conveyance and mortgage of the same property are completed at the same time, and are prepared by the same solicitor, he is to be entitled to charge only half the above fees for investigating title and preparing the mortgage deed up to £5,000, and on any excess above £5,000, one-fourth thereof, in addition to his full charges upon the purchase-money and his commissions for negotiating (if any).

7. Fractions of £100, under £50, are to be reckoned as £50. Fractions of £100, above £50, are to be reckoned as £100.

See *Re Onward B. S.*, *supra*, r. 2; *Re Hellard*, *infra*.

8. Where the prescribed remuneration would, but for this provision, amount to less than £5, the prescribed remuneration shall be £5, except on transactions under £100, in which cases the remuneration of the solicitor for the vendor, purchaser, mortgagor or mortgagee, is to be £3

See *Re Parfitt*, 23 Q. B. D. 40; *Re Onward B. S.*, *supra*, r. 2 (n.); *Re Margetts*, (1896) 2 Ch. 263. See r. 5, Sched. 1, Part 2, p. 594.

9. Where a property is sold subject to incumbrances, the amount of the incumbrances is to be deemed a part of the purchase-money, except where the mortgagee purchases, in which case the charge of his solicitor shall be calculated upon the price of the equity of redemption.

Re Gallard, 21 Q. B. D. 38; sale by second mortgagee, *Fortescue* v. *Mercantile Bank, &c.*, (1897) 2 Q. B. 236.

10. The above scale as to mortgages is to apply to transfers of mortgages where the title is investigated, but not to transfers where the title was investigated by the same solicitor on the original mortgage or in any previous transfer; and it is not to apply to further charges, where the title has been so previously investigated. As to such transfers and further charges, the remuneration is to be regulated according to the present system as altered by Schedule II. hereto. But the scale for negotiating the loan shall be chargeable on such transfers and further charges where it is applicable.

"**Previously investigated.**"—See *Earl of Aylesford* v. *Earl Poulett*, (1891) 1 Ch. 248.

"**Further charges.**"—A tenant for life charged his property with £192,000. These charges were vested in an insurance company. The trustees of the settlement were empowered to raise money to pay off debts of tenant for life. They executed a mortgage in fee to the company to secure £232,000. Of this sum the company retained £192,000, and paid £40,000 to trustees. Held, under the circumstances, that this was not a further charge, but a new mortgage. *Earl of Aylesford* v. *Earl Poulett*, *supra*.

11. The scale for conducting a sale by auction shall apply only in cases where no commission is paid by the client to an auctioneer. The scale for negotiating shall apply in cases where the solicitor of a vendor or purchaser arranges the sale or purchase and the price and terms and conditions thereof, and no commission is paid by the client to an auctioneer, or estate, or other agent. As to a mortgagee's solicitor, it shall only apply to cases where he arranges and obtains the loan from a person for whom he acts. In case of sales under the Lands Clauses Consolidation Act or any other private or public Act under which the vendor's charges are paid by the purchaser, the scale shall not apply.

Note.—Clause 4 of G. O. p. 584, is controlled by this rule; *per* Lindley, L. J., *Re Wilson*, 29 C. D. 795. See also end of r. 2, p. 589, supra.

"**For Negotiating.**"—This means obtaining all the terms and all the conditions, not seeing to their performance. It covers cases in which sales are arranged under sanction of court. *Re Macgowan*, (1891) 1 Ch. 105 (C. A.).

Where a standing arrangement existed between an owner of land and an auctioneer, for a fixed rate of payment on sale or letting of any of the land, and a portion was sold with the help of the owner's solicitor, it was held that the latter was not entitled to the scale fee. *Re Withall*, 39 W. R. 529, (1891) 3 Ch. 8.

"**Where no commission is paid by the client.**"—*I.e.*, the commission must not be paid by the client, nor must he be liable in law to pay; see *Re Macgowan*, *Re Withall*, *infra*. If a solicitor upon a general retainer, employs an auctioneer to sell property, and himself pays the auctioneer's fee or commission, afterwards charging such fee or commission against his client, such a payment is a payment by the client, or which he was liable to pay, within the negative condition of this rule, and the scale does not apply. *Re Macgowan*, *infra*; *Mawdsley* v. *Beesley*, 36 Sol. Jo. 63; *Cholditch* v. *Jones*, (1896) 1 Ch. 42.

Where the auctioneer's commission is paid by the client, this rule does not deprive the solicitor of all remuneration for work done in respect of the conduct of the sale, but under G. O. sec. 2, s.s. (C.), he is entitled to a *quantum meruit* for such work, to be regulated according to the old system as altered by Sched. II. *Re Faulkner*, 36 C. D. 566; *Parker* v. *Blenkhorn*, 14 App. Cas. 1; *Burd* v. *B.*, 40 C. D. 628.

Where the commission is paid by the purchaser under a condition of sale the rule does not apply, *Cholditch* v. *Jones*, (1896) 1 Ch. 42.

What is Commission.—As to what is commission, see *Burd* v. *B.*, 40 C. D. p. 634, and judgment of Bowen, L.J., *Re Macgowan*, (1891) 1 Ch. p. 117. It includes a lump sum paid by client to auctioneer. *Burd* v. *B.*, *infra*; *Re Macgowan*, (1891) 1 Ch. 105. Where a client has been charged for, and has paid the auctioneer a fee for taking bids only, the solicitor doing all the rest of the work, as is the custom in the North of England, such payment is a "commission" within this rule, *Drielsma* v. *Manifold*, (1894) 3 Ch. 100; *Peace* v. *Ellis*, 36 W. R. 61.

Where payment was made to surveyor who did the bulk of the work, and also to auctioneer, the case was held to come within this rule. *Re Wilson*, 29 C. D. 790; *Wood* v. *Calvert*, 34 W. R. 732; *Re Sykes*, 36 W. R. 234; cf. *Re Harris*, 56 L. T. 477; *Re Gallard*, 21 Q. B. D. 38 As to valuers' fees, cf. *Re Macgowan*, *supra*.

Where Claim for Commission made by Land Agent.—As to the difficulty of preparing a bill where an action is pending in respect of a claim for commission made by a land agent, see a letter, 29 L. Jo. 186.

"**Arranges.**"—See *Re Macgowan*, *supra*.

"**Mortgagee's Solicitor.**"—He must not only "arrange," but "obtain" the loan, *Re Eley*, 37 C. D. 40.

"**Sales under L. C. C. Act.**" &c. &c.—Where land has been compulsorily taken by a Ry. Co., and the proceeds of sale are paid into Court, and then re-invested in land, the costs incurred in the re-investment may be charged according to the purchaser's scale under Act, *Re Merchant Taylors' Co.*, 29 C. D. 209: 30 C. D. 28.

The above exception in the rule is intentionally applicable only to vendor's costs, not to purchaser's, *Re Stewart*, 41 C. D. 494.

Voluntary Sale.—L. C. C. Act incorporated.—The scale does not apply in such case (*Re Burdekin*, (1895) 2 Ch. 136).

12. In cases where, under the previous portion of this Schedule, a solicitor would be entitled to charge a commission for negotiating a sale or mortgage, or for conducting a sale by auction, and he shall not charge such commission, then he shall be entitled to charge the rates allowed in the first column on all transactions up to £2,000, and to charge in addition those allowed by the second column on all amounts above £2,000, and not exceeding £5,000, and further to charge those allowed by the third column on all amounts above £5,000 and not exceeding £50,000, instead of the rates allowed up to the amounts mentioned in those columns respectively.

Cf. Gen. Order, clause 4, p. 584.

SCHEDULE I.

PART II.

See Gen. Order, clause 2 (b) p. 583.

(FIRST SCALE.)

Scale of Charges as to Leases, or Agreements for Leases, at Rack Rent (other than a Mining Lease, or a Lease for Building Purposes, or Agreement for the same).

Lessor's solicitor for preparing, settling, and completing lease and counterpart:—

Where the rent does not exceed £100 .	£7 10*s.* per cent. on the rental, but not less in any case than £5.

Where the rent exceeds £100 and does not exceed £500	£7 10*s.* in respect of the first £100 of rent, and £2 10*s.* in respect of each subsequent £100 of rent. [Where the rent exceeds £100 the further remuneration ceases to be a percentage on any fractional amount of £100, and becomes an allowance for each £100, *Re McGarel*, (1897) 1 Ch. 400.]
Where rent exceeds £500	£7 10*s.* in respect of the first £100 of rent, and £2 10*s.* in respect of each £100 of rent up to £500, and £1 in respect of every subsequent £100.
Lessee's solicitor for perusing draft and completing	One half of the amount payable to the lessor's solicitor.

Note.—In the absence of agreement the taxing-master is bound to tax according to scale in all cases where the scale is applicable, and notwithstanding an item bill has been delivered: *Re Negus*, (1895) 1 Ch. 73. The scale applies only where the solicitor has substantially done the work mentioned in the schedule: *Re Hickley*, 33 W. R. 321, adopting principle of *Re Lacey*, 25 C. D. 301.

The scale fee for "preparing, settling, and completing lease," &c., includes the solicitor's remuneration in respect of *negotiations* which lead up to, and the preparation of the agreement which precedes the lease, and the solicitor cannot charge in addition to the scale fee for such preparation, &c. (*Re Field*, 29 C. D. 609; *Re Emmanuel*, 33 C. D. 40, approved *Savery* v. *Enfield L. B.*, (1893) A. C. 218; *Re Negus*, *infra*; *Re Horn*, (1896) 2 Ch. 797.

This scale includes everything which is called in Gen. Ord. r. 2, "business connected" with leases (*Re Allen*, 34 C. D. 439), and applies to an agreement in writing for a lease for less than three years at a rack-rent, and in estimating the costs payable by the lessee to lessor's solicitor, the cost of the counterpart must be deducted from the scale-fee, *Re Negus*, (1895) 1 Ch. 73.

But it does not cover collateral matter, *Re Savery*, *supra*, or negotiations carried on as to letting with persons other than person to whom lease is ultimately granted, *Re Martin*, 41 C. D. 381.

Where a solicitor prepared an agreement for a lease, which provided for the granting of a lease in the form scheduled thereto, and in the bill after charging for the agreement for lease, a charge was made for preparing, engrossing, executing, and completing lease and counterpart. Held, that scale charge did not apply, as the work charged for had not been really done, and that Schedule II. applied. *Re Hickley*, 33 W. R. 321; *Re Robson*, 45 C. D. 71; *Re Horn*, (1896) 2 Ch. 797.

"*Agreement for Leases.*"—See as to the meaning of this, *Re Emmanuel*, 33 C. D. 40; *Re Negus*, *supra*.

"*Perusing Draft and Completing.*"—Where a form has been settled, and subsequent leases only follow that form, the scale charges do not apply (*Welby* v. *Still*, (1895) 1 Ch. 524).

(SECOND SCALE.)

Scale of Charges as to Conveyances in Fee, or for any other Freehold Estate, Reserving Rent, or Building Leases Reserving Rent, or other Long Leases not at Rack Rent (except Mining Leases) or Agreements for the same respectively.

Vendor's or lessor's solicitor for preparing, settling, and completing conveyance and duplicate, or lease and counterpart:—

Amount of Annual Rent.	Amount of Remuneration.
Where it does not exceed £5 .	£5.
Where it exceeds £5, and does not exceed £50	The same payment as on a rent of £5, and also 20 per cent. on the excess beyond £5. See *Re Hellard* (1896), 2 Ch. 229.
Where it exceeds £50, but does not exceed £150	The same payment as on a rent of £50, and 10 per cent. on the excess beyond £50.
Where it exceeds £150. . .	The same payment as on a rent of £150, and 5 per cent. on the excess beyond £150.

Where a varying rent is payable, the amount of annual rent is to mean the largest amount of annual rent.

Purchaser's or lessee's solicitor for perusing draft and completing . .	{	One-half of the amount payable to the vendor's or lessor's solicitor.

Rules applicable to Part II. of Schedule I. as to all Leases or Conveyances at a Rent, or Agreements for the same, other than Mining Leases and Agreements therefor.

See as to this heading *Re Webb*. (1897) 1 Ch. p. 149.

1. Where the vendor or lessor furnishes an abstract of title, it is to be charged for according to the present system as altered by Schedule II.

Re Robson, 45 C. D. 71; *Re Hasties*, *Re Horn*, *infra*.

2. Where a solicitor is concerned for both vendor and purchaser, or lessor and lessee, he is to charge the vendor's or lessor's solicitor's charges, and one half of that of the purchaser's or lessee's solicitor.

3. Where a mortgagee or mortgagor joins in a conveyance or lease, the vendor's or lessor's solicitor is to charge £1 1*s*. extra.

4. Where a party other than a vendor or lessor joins in a conveyance or lease, and is represented by a separate solicitor, the charges of such separate solicitor are to be dealt with under the old system as altered by Schedule II.

5. Where a conveyance or lease is partly in consideration of a money payment or premium, and partly of a rent, then, in addition to the remuneration hereby prescribed in respect of the rent, there shall be paid a further sum equal to the remuneration on a purchase at a price equal to such money payment or premium

See *Re Hellard* (1896), 2 Ch. 229, and r. 8 in Sched. I., Pt. I.: *Re Hasties*, 36 W. R. 572; *Re Robson*, 45 C. D. 71; *Re Webb*, (1897) 1 Ch. 144; *Re Horn*, (1896) 2 Ch. 797.

6. Fractions of £5 are to be reckoned as £5

Cf. *Re McGarel*, (1897) 1 Ch. 400, 405.

SCHEDULE II.

See Gen. Order, clause 2 (c), p. 583, and clause 6, p. 584.

Instructions for, and Drawing and Perusing Deeds, Wills and other Documents.

Such fees for instructions as, having regard to the care and labour required, the number and lengths of the papers to be perused, and the other circumstances of the case, may be fair and reasonable. In ordinary cases, as to drawing, &c., the allowance shall be—

For drawing	2*s.* per folio.
For engrossing	8*d.* „ „
For fair copying . . .	4*d.* „ „
For perusing	1*s.* „ „

Attendances.

In ordinary cases	10*s.*

In extraordinary cases, the taxing-master may increase or diminish the above charge if for any special reasons he shall think fit.

ABSTRACTS OF TITLE (where not covered by the above scales).

Drawing each brief sheet of 8 folios .	6*s.* 8*d.*
Fair copy	3*s.* 4*d.*

Journeys from Home.

In ordinary cases for every day of not less than 7 hours employed on business or in travelling	£5 5*s.*
Where a less time than 7 hours is so employed per hour	15*s.*

Schedule II. not exhaustive.—See Gen. Ord. r. 2 (c). *supra*, and note. This schedule provides not exhaustively at all, but only in respect of certain matters, a change in the actual amount of the charges to be made therein prescribed, and it leaves untouched a very large class of business which is to be paid for according to the existing system. *Parker* v. *Blenkhorn*, *Newbould* v. *Bailward*, 14 App. Cas. 7; *Re Reade*, 33 Sol. Jo. 219.

By contract on sale of freehold the vendor, &c., was to execute a proper conveyance to purchaser, such conveyance to *be prepared and completed at vendor's* expense, inclusive of stamp duty. Purchaser assigned contract to practising solicitor, who investigated title and prepared his conveyance, and claimed scale fee for costs of investigating title and preparing and completing conveyance. Held vendor was not obliged to pay for investigating, but only costs of preparing and completing conveyance, according to Schedule II. (*Re Thackeray's Contract*, 34 Sol. Jo. 64). Cf. also *Re Baillie*, 15 Times Rep. 277.

Election.—When the scales prescribed in Schedule I. apply, the solicitor may elect to be re-nominated according to present system altered by this Schedule, see Gen. Order, clause 6, p. 584.

"Deeds, Wills, and other Documents."—Abstracts of title are not included herein. The charge for perusing, 6*s.* 8*d.* for three brief sheets of eight folios each, remains unaltered, *Re Parker*, 29 C. D. 199; as to conditions of sale, *Re Rees*, 58 L. T. 69.

Document.—A case for the opinion of counsel is a "document" within the meaning of this schedule, and the practice of the taxing-masters to allow a fee of 1*s.* only is wrong, *Re Mahon* (1893), 1 Ch. 507.

"Perusing."—See *Re Parker*, *Re Rees*, *supra*. A solicitor making advances to a client on real security is not entitled to charge at the rate of 1*s.* per folio. He will be allowed 4*d.* *Re Robertson*, 19 Q. B. D. 1.

"In extraordinary cases."—This provision relates not only to attendances but to items "for drawing," &c. *Re Reade*, W. N. (89) 26; and cf. *Re Rees*, 58 L. T. 69. This term "includes not only more difficult, but less difficult cases than the normal," *Re Mahon* (1893), 1 Ch. 507 (C. A.). As to discretion of taxing-master in these cases, see *Ibid.*

Attendances.—10*s.* per hour is the proper charge for attending, and

producing deeds for examination with an abstract of title (*Walters* v. *Chinery*, 34 Sol. Jo. 284).

Charges under Fines and Recoveries Act.—Among the Rules under the Fines and Recoveries Abolition Act and s. 7 of the Conveyancing Act, 1881, there is the following rule :—

8. *The costs to be allowed to solicitors in respect of the matters hereinafter mentioned, when not otherwise regulated by the general orders in force for the time being under the Solicitors' Remuneration Act*, 1881, *or by special agreement, shall be as follows; anything in the Rules of the Supreme Court as to costs, dated the 12th August*, 1875, *to the contrary notwithstanding* :—

CHARGES UNDER THE ACT 3 & 4 WILL. IV. C. 74 (THE FINES AND RECOVERIES ACT).

	£	s.	d.
For the endorsements on deeds required by the Fines and Recoveries Act, to be entered on the Court Rolls of Manors of the memorandum of production and memorandum of entry on Court Rolls, to be signed by the Lord Steward or Deputy Steward, each indorsement of memorandum 5s., together	0	10	0
For the entries on the Court Rolls of deeds and the indorsements thereon, at per folio of 72 words . .	0	0	6
For taking the consent of each protector of settlement of lands	0	13	4
For taking the surrender by each tenant in tail of lands	0	13	4
For entries of such surrenders or the memorandums thereof in the Court Rolls, at per folio of 72 words .	0	0	6

GUARDIANSHIP OF INFANTS ACT, 1886.

See Additional Notes, Pt. IV., "Infants," p. 333; Seton, p. 877.

1. This Act may be cited as the Guardianship of Infants Act, 1886.

"The law as regards the rights of mothers as guardians, has been revolutionized by this Act." per M. R., *Re X.*, (1899) 1 Ch. p. 529. The benefit of the infant *and that alone* will be looked at. (*Ibid*, p. 531.)

On death of father, mother to be guardian alone or jointly with others.

2. On the death of the father of an infant, and in case the father shall have died prior to the passing of this Act, then from and after the passing of this Act, the mother if surviving shall be the guardian of such infant, either alone when no guardian has been appointed by the father, or jointly with any guardian appointed by the father. When no guardian has been appointed by the father, or if the guardian or guardians appointed by the father is or are dead, or refuses or refuse to act, the Court may, if it shall think fit, from time to time appoint a guardian or guardians to act jointly with the mother.

See R. S. C. under the Act, rr. 3 and 10, *infra*, and *Re Scanlan*, 40 C. D. 200; *Re McGrath*, (1893) 1 Ch. 143 (C. A.).

"**May if it shall think fit.**"—The mother is sole guardian, unless the Court *in the proper exercise of its discretion*, not being influenced by the older cases, appoint another jointly with her. *Re X.*, (1899) 1 Ch. 526.

Mother may appoint guardian, in certain cases.

3. (1.) The mother of any infant may by deed or will appoint any person or persons to be guardian or guardians of such infant after the death of herself and the father of such infant (if such infant be then unmarried), and where guardians are appointed by both parents they shall act jointly.

(2.) The mother of any infant may by deed or will provisionally nominate some fit person or persons to act as guardian or guardians of such infant after her death jointly with the father of such infant, and the Court, after her death, if it be shown to the satisfaction of the Court that the father is for any reason unfitted to be the sole guardian of his children, may confirm the appointment of such guardian or guardians, who shall thereupon be authorized and empowered so to act as aforesaid, or make such other order in respect of the guardianship as the Court shall think right.

See R. S. C. under the Act, r. 4, p. 599, *infra*, and *Re G.* (an infant), (1892) 1 Ch. 292; *Re McGrath*, (1893) 1 Ch. 143 (C. A.). See pp. 334, 336, *supra*: Seton, F. 7, p. 880.

This Act is essentially a mothers Act, it has greatly extended their rights, *Re A. & B. infants*, (1897) 1 Ch. p. 790.

(3.) In the event of guardians being unable to agree upon a question affecting the welfare of an infant, any of them may apply to the Court for its direction, and the Court may make such order or orders regarding the matters in difference as it shall think proper.

Powers of guardian.

4. Every guardian in England and Ireland under this Act shall have all such powers over the estate and the person, or over the estate (as the case may be) of an infant as any guardian appointed by will or otherwise now has in England under the Act, 12 Charles II., c. 24, or in Ireland under the Act of the Irish Parliament 14 & 15 Charles II., c. 19, or otherwise.

Court may make orders as to custody.

5. The Court may, upon the application of the mother of any infant (who may apply without next friend), make such order as it may think fit regarding the custody of such infant and the right of access thereto of either parent, having regard to the welfare of the infant and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary, or discharge such order on the application of either parent, or, after the death of either parent, of any guardian under this Act, and in every case may make such order respecting the costs of the mother and the liability of the father for the same or otherwise as to costs as it may think just.

See R. S. C. under the Act, r. 5, *infra*, and *A. & B. (Infants)*, (1897) 1 Ch. 788; cases cited, Additional Notes, Pt. IV., (nn.) "Guardianship," p. 336, "Custody," &c., p. 334.

Power to Court to remove guardian.

6. In England and Ireland the High Court of Justice, in any division thereof, and in Scotland either division of the Court of Session, may, in their discretion, on being satisfied that it is for the welfare of the infant, remove from his office any testamentary guardian, or any guardian appointed or acting by virtue of this Act, and may also, if they shall deem it to be for the welfare of

the infant, appoint another guardian in place of the guardian so removed.

See R. S. C. under the Act, r. 6, *infra*, and *ante*, p. 334 ; *Re McGrath*, (1893) 1 Ch. 143 ; *Re G.*, (1892) 1 Ch. 292 ; Seton, p. 877.

"**For the Welfare of the Infant.**"—Compare *Reg.* v. *Gyngall*, (1893) 2 Q. B. 232, with *Reg.* v. *Williams*, 58 L. J., Q. B. 177.

Guardianship in case of divorce or judicial sepa ation.

7. In any case where a decree for judicial separation, or a decree either *nisi* or absolute for divorce, shall be pronounced, the Court pronouncing such decree may thereby declare the parent by reason of whose misconduct such decree is made to be a person unfit to have the custody of the children (if any) of the marriage ; and, in such case, the parent so declared to be unfit shall not, upon the death of the other parent, be entitled as of right to the custody or guardianship of such children.

See p. 333, *ante* ; *Robinson* v. *R.*, 57 L. T. 118 ; *Skinner* v. *S.*, 13 P. D. 90 ; *Handford* v. *H.*, 63 L. T. 250 ; *Webley* v. *W.*, 64 L. T. 839.

Application of Act to Scotland.

8. In the application of this Act to Scotland the word "guardian" shall mean tutor, and the word "infant" shall mean pupil.

Interpretation of terms.

9. In the construction of this Act the expression "the Court" shall mean—

In England the High Court of Justice or the county court of the district in which the respondent or respondents or any of them may reside :

In Ireland the High Court of Justice or the county court of the district in which the respondent or respondents or any of them may reside :

In Scotland the Court of Session or the sheriff court within whose jurisdiction the respondent or respondents or any of them may reside.

Any application under this Act to the High Court of Justice in England or to the High Court of Justice in Ireland shall be made to the Chancery Division of the said Courts respectively in such manner as may be prescribed by Rules of Court.

In Scotland the expression "the Court of Session" shall mean either division of the said Court, and in vacation the Lord Ordinary on the Bills.

As to removing proceedings and appeals.

10. In England and Ireland when any application has been made under this Act to a county court the High Court of Justice shall, at the instance of any party to such application, order such application to be removed to the High Court of Justice and there proceeded with before a judge of the Chancery Division, on such terms as to costs as it may think proper.

In England and Ireland an appeal shall lie to the High Court of Justice from any order made by a county court under this Act ; and, subject to any Rules of Court made after the passing of this Act, any such appeal shall be heard by a judge of the Chancery Division of the High Court of Justice at chambers or in court, as he shall direct.

(The two remaining paragraphs of this section refer to Scotland.)

Appeals.—See R. S. C. under the Act, rr. 8, 11. 12, 13, *infra*. By J. A., 1894, s. 1 (5), p. 519, where there is a right of appeal to High Court, the appeal is to be heard by a Divisional Court.

11. Rules for regulating the practice and procedure in any proceedings under this Act and the forms in such proceedings may from time to time be made. Rules as to Procedure.

(*a*) So far as respects the High Court of Justice or Her Majesty's Court of Appeal in England or Ireland by Rules of Court.

(*b*) (Applies to Scotland.)

(*c*) (Applies to Scotland.)

12. [This section relates to Scotland only.]

13. [This section saves the jurisdiction of the High Court in England and Ireland, and the Court of Session in Scotland to appoint or remove guardians, or tutors, or factors, &c. *Re G.*, (1892) 1 Ch. 292; *Re McGrath*, (1893) 1 Ch. 143 (C. A.).]

RULES OF THE SUPREME COURT, UNDER GUARDIANSHIP OF INFANTS ACT, 1886.

1. These rules may be cited as "The Rules of the Supreme Court, Guardianship of Infants," and shall apply to proceedings in the High Court of Justice, including appeals, under the Guardianship of Infants Act, 1886, hereinafter called the Act.

See Cases cited, Additional Notes, Pt. IV., "Infants," (n.) "Custody of Infants," p. 334.

2. Any application under the Act may be made as follows:—

(*a.*) Where there is pending any action or other proceeding by reason whereof the infant is a ward of Court, then by a summons in such action or proceeding, and in the matter of the infant.

(*b.*) Where there is not pending any such action or other proceeding as aforesaid then by an originating summons in the matter of the infant.

3. A summons under section 2 of the Act may be taken out by any next friend of the infant, and shall be served upon the mother of the infant.

"Next Friend."—See (n.) "Next friend," Vol. I., O. 16, r. 16, p. 167.

4. (*a.*) A summons under section 3, sub-section (2), of the Act may be taken out by any next friend of the infant, and shall be served upon the father of the infant.

Re G. (an infant), (1892) 1 Ch. 292.

(*b.*) A summons under section 3, sub-section (3), of the Act may be taken out by any guardian of the infant, and shall be served upon the other guardian or guardians.

5. (*a.*) A summons under section 5 of the Act taken out by the mother of any infant shall be served upon the father of the infant, or if he be dead, upon the guardian or guardians of the infant, if any such there be, other than the mother.

(*b.*) A summons under section 5 of the Act taken out by the father of any infant shall be served upon the mother of the infant, or if she be dead, upon the guardian or guardians of the infant, if any such there be, other than the father.

(*c.*) A summons under section 5 of the Act taken out by any guardian of an infant, other than a parent, shall be served upon the other guardian or guardians of the infant, if any such there be, other than a surviving parent, and also upon the surviving parent, if any.

6. A summons under section 6 of the Act may be taken out by any next friend of the infant, and shall be served upon his guardian or guardians.

7. All matters relating to removals and appeals from county courts in respect of which jurisdiction is given to the High Court by the Act shall be transacted and disposed of in Court or in chambers by or under the directions of any Judge of the Chancery Division (hereinafter called the judge) named for that purpose by the Lord Chancellor.

See Section 10 of the Act and note.

8. The application of any party under section 10 of the Act for an order of removal from a county court to the High Court shall be by an originating summons in the Chancery Division in the matter of the infant, and shall be marked with the name of the Judge. It shall not be necessary to serve the summons upon any person. When the Judge upon hearing the summons shall (on such terms as to costs as he may think proper) have ordered the application to be removed to the High Court, the application shall be proceeded with before such Judge; and the applicant shall serve a copy of the order upon the registrar of the county court, who shall forthwith transmit all documents (if any) in the matter filed or lodged in the county court to such officer as the Judge may direct.

9. In any proceeding under the Act the Judge may direct such persons, other than those in these Rules respectively mentioned, to be served with the summons as he may think fit.

10. Upon any application under the Act for the appointment of a guardian of an infant the evidence shall show—

(*a.*) The age of the infant;

(*b.*) The nature and amount of the infant's fortune and income;

(*c.*) What relations the infant has.

See (n.) "Guardianship of," Additional Notes, Pt. IV., p. 336.

"**Under the Act.**"—Similar evidence must be produced where application is not under the Act, see O. 55 r. 25, Vol. I.

11. Order LIX., rules 10, 11, 12, 13, 16, and 17, shall apply to appeals to the Chancery Division of the High Court from county courts under the Act. The appeal shall not operate as a stay of proceedings under the decision appealed from unless the county court shall so order.

See Section 10 of the Act and note, p. 598.

12. The Judge may after an appeal has been entered make such orders, either *ex parte* or otherwise, with regard to the custody of the infant pending the appeal and otherwise as he may think proper.

See Section 10 of the Act and note, p. 598.

13. Subject to these Rules, the Rules for the time being in force with respect to appeals to the Queen's Bench Division from inferior courts, and also the Rules for the time being in force with respect to appeals from the High Court to the Court of Appeal, shall, so far as practicable, apply to appeals from county courts to the High Court under the Act.

"**Rules * * with Respect to Appeals.**"—As to appeals from Q. B. D., see O. 59 r. 9, Vol. I. As to appeals from High Court to C. A., O. 58.

As to leave to appeal being required in interlocutory matters and matters of practice and procedure, see J. A., 1891, s. 1, *ante*, Division I., pp. 517 *et seq.*

JUDICIAL TRUSTEES ACT, 1896.

[59 & 60 VICT. CAP. 35.]

An Act to provide for the appointment of judicial trustees and otherwise to amend the law respecting the administration of trusts and the liability of trustees. [14th August, 1896.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Power of Court on application to appoint judicial trustee.

1.—(1.) Where application is made to the Court by or on behalf of the person creating or intending to create a trust, or by or on behalf of a trustee or beneficiary, the Court may, in its discretion, appoint a person (in this Act called a judicial trustee) to be a trustee of that trust, either jointly with any other person, or as sole trustee, and, if sufficient cause is shown, in place of all or any existing trustees.

"**In its discretion.**"—The Court refused, at request of a reversioner under a will, to appoint a judicial trustee either alone or jointly with the executor, who was tenant for life, no charge of improper conduct being made against such executor. *Re Ratcliff*, (1898) 2 Ch. 352.

So, on the application of persons entitled to $\frac{1}{3}$ of a reversionary interest, it declined to appoint, as two trustees appointed by tenant for life were prepared to act. *Re Chisholm*, 43 Sol. Jo. 43.

(2.) The administration of the property of a deceased person, whether a testator or intestate, shall be a trust, and the executor or administrator a trustee, within the meaning of this Act.

"**A trustee.**"—Devastavit by executor, *Re Kay*, (1897) 2 Ch. p. 821. In *Re Roberts*, 76 L. T. 479, C. A., an executor was excused under s. 3.

The Court has power hereunder to remove an executor and appoint a judicial trustee in his place. *Re Ratcliff*, *supra*.

(3.) Any fit and proper person nominated for the purpose in the application may be appointed a judicial trustee, and, in the absence of such nomination, or if the Court is not satisfied of the fitness of a person so nominated, an official of the Court may be appointed, and in any case a judicial trustee shall be subject to the control and supervision of the Court as an officer thereof.

(4.) The Court may, either on request or without request, give to a judicial trustee any general or special directions in regard to the trust or the administration thereof.

(5.) There may be paid to a judicial trustee out of the trust property such remuneration, not exceeding the prescribed limits, as the Court may assign in each case, subject to any rules under this Act respecting the application of such remuneration where the judicial trustee is an official of the Court, and the remuneration so assigned to any judicial trustee shall, save as the Court may for special reasons otherwise order, cover all his work and personal outlay.

(6.) Once in every year the accounts of every trust of which a judicial trustee has been appointed shall be audited, and a report thereon made to the Court by the prescribed persons, and, in any case where the Court shall so direct, an inquiry into the administration by a judicial trustee of any trust, or into any dealing or transaction of a judicial trustee, shall be made in the prescribed manner.

Court to exercise jurisdiction.

2. The jurisdiction of the Court under this Act may be exercised by the High Court, and as respects trusts within its jurisdiction by a Palatine Court, and (subject to the prescribed definition of the jurisdiction) by any County Court judge to whom such jurisdiction may be assigned under this Act.

Jurisdiction of court in cases of breach of trust.

3.—(1.) If it appears to the Court that a trustee, whether appointed under this Act or not, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the passing of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed such breach, then the Court may relieve the trustee either wholly or partly from personal liability for the same.

(2.) This section shall come into operation at the passing of this Act.

Pleading the Statute.—This is not necessary, but it is advisable to do so: *Singlehurst* v. *Tapscott*. W. N. (99) 133 (C. A.).

"**Is *.* * liable.**"—This assumes a breach of trust has been committed, per Lindley, M.R., *Perrins* v. *Bellamy*. (1899) 1 Ch. p. 800.

"**Or may be.**"—"This seems to point to doubtful questions of construction," per Lindley, L. J., *Re Grindey*, *infra*.

"**Honestly and reasonably.**"—A narrow construction should not be placed on the section, per Chitty, L.J., *Re Grindey*, *infra*.

Trustees excused.—*Re Kay*, (1897) 2 Ch. 518; *Re Roberts*, 76 L. T. 479 (C. A.); *Perrins* v. *Bellamy*, (1899) 1 Ch. 797, where trustees sold leasehold, to the rents of which tenant for life was entitled in specie: *Re Grindey*, (1898) 2 Ch. 593 (C. A.), where trustees failed to call in a promissory note, but having regard to the will and the amount of the note, had acted reasonably.

Trustees not excused.—*Re Stuart*, (1897) 2 Ch. 583; *Re Turner*, (1897) 1 Ch. 536; *Wynne* v. *Tempest*, 13 Times Rep. 360; *Re Barker*, 77 L. T. 712. Where a trustee of a Building Society did nothing, but trusted to his co-trustee, *Re Second E. Dulwich, &c., B. Building Society*, 68 L. J. Ch. 196.

"**Omitting to obtain directions.**"—Where the amount of a promissory note owing to testator was £166 it was held reasonable to save the summons to obtain directions, *Re Grindey*, *supra*. A trustee is not now entitled, as "of" course, to get the direction of the Court. He cannot now approach the Court at all except at the risk of having to pay costs. See judgment of Rigby, L. J., in *Perrins* v. *Bellamy*, *supra*.

"**May relieve.**"—Devastavit by executor, relief given, *Re Kay*, (1897) 3 Ch. 518; *Re Turner*, *supra*; *Re Roberts*, *supra*.

"**Trustee.**"—See s. 1, sub-s. 2.

"**Wholly or partly.**"—Partial relief, *Re Kay*, *supra*.

Rules.

4.—(1.) Rules may be made for carrying into effect this Act, and especially—

"**Rules may be made.**"—See the Rules, p. 605, *infra*.

(1) for requiring judicial trustees, who are not officials of the Court, to give security for the due application of any trust property under their control :

Rule 9.

(2) respecting the safety of the trust property, and the custody thereof :

Rule 10.

(3) respecting the remuneration of judicial trustees and for fixing and regulating the fees to be taken under this Act so as to cover the expenses of the administration of this Act, and respecting the payment of such remuneration and fees out of the trust property, and where the judicial trustee is an official of the Court, respecting the application of the remuneration and fees payable to him :

Rules 17-19.

(4) for dispensing with formal proof of facts in proper cases :

(5) for facilitating the discharge by the Court of administrative duties under this Act without judicial proceedings, and otherwise regulating procedure under this Act and making it simple and inexpensive :

(6) for assigning jurisdiction under this Act to County Court judges and defining such jurisdiction :

Rule 31.

(7) respecting the suspension or removal of any judicial trustee, and the succession of another person to the office of any judicial trustee who may cease to hold office, and the vesting in such person of any trust property :

Rules 20-22.

(8) respecting the classes of trusts in which officials of the Court are not to be judicial trustees, or are to be so temporarily or conditionally :

Rules 25-26.

(9) respecting the procedure to be followed where the judicial trustee is executor or administrator :

(10) for preventing the employment by official trustees of other persons at the expense of the trust, except in cases of strict necessity :

(11) for the filing and auditing of the accounts of any trust of which a judicial trustee has been appointed.

Rules 14-16.

(2.) The rules under this Act may be made by the Lord Chancellor, subject to the consent of the Treasury in matters relating to fees and to salaries and numbers of officers, and to the consent of the authority for making orders under the Solicitors Remuneration Act, 1881, in matters relating to the remuneration of solicitors. The rules shall be laid before Parliament and have the same force as if enacted in this Act, provided that if, within thirty days after

44 & 45 Vict. c. 44.

such rules have been laid before either House of Parliament during which that House has sat, the House presents to Her Majesty an address against such rules or any of them, such rules or the rule specified in the address shall thenceforward be of no effect.

Definitions.

5. In this Act—

The expression "official of the Court" means the holder of such paid office in or connected with the Court as may be prescribed.

The expression "prescribed" means prescribed by rules under this Act.

Short title, extent, and commencement of Act.

6.—(1.) This Act may be cited as the Judicial Trustees Act, 1896.

(2.) This Act shall not extend to any charity, whether subject to or exempted from the Charitable Trusts Acts, 1853 to 1894.

(3.) This Act shall not extend to Scotland or Ireland.

(4.) This Act, except as by this Act otherwise provided, shall come into operation on the first day of May, one thousand eight hundred and ninety-seven.

RULES UNDER THE JUDICIAL TRUSTEES ACT, 1896.

Short title. 59 & 60 Vict. c. 35.

1. The following Rules may be cited as the Judicial Trustee Rules, 1897, and shall apply as far as practicable to all matters and proceedings under the Judicial Trustees Act, 1896 (in these Rules called the Act).

Appointment of Judicial Trustee.

Mode of making application.

2. An application to the Court to appoint a judicial trustee shall be in the Chancery Division, and

(*a*) if not made in a pending cause or matter, shall be made by originating summons; and

(*b*) if made in a pending cause or matter, shall be made as part of the relief claimed, or by summons in the cause or matter.

Service of summons.

3.—(1.) The summons shall be served,—

(*a*) where the application is made by or on behalf of a trustee, on the other trustee (if any); and

(*b*) where the application is made by or on behalf of a beneficiary, on the trustees (if any),

and in either case on such (if any) of the beneficiaries as the Court directs.

(2.) Where the application is made by or on behalf of a person creating or intending to create a trust, the summons, subject to any direction of the Court, need not be served on any person.

(3.) The Court may give any directions it thinks fit, either dispensing with the service of the summons on any person on whom

it is required to be served under this Rule, or requiring the service of the summons on any person on whom it is not required to be served under this Rule.

Statement to be supplied on application.

4.—(1.) Where an application is made for the appointment of a judicial trustee by originating summons, the applicant must, when he takes out the summons, supply for the use of the Court a written statement signed by him containing the following particulars so far as he can gain information with regard to them :—

(*a.*) A short description of the trust and the instrument by which it is, or is to be, created, and of the relation which the applicant bears to the trust ;

(*b.*) If a person is nominated as judicial trustee the name and address of the person nominated, and short particulars of the reasons which lead to his nomination ;

(*c.*) If a person is nominated as judicial trustee, a statement whether it is proposed that the person nominated should be remunerated or not ;

(*d.*) Short particulars of the trust property, with an approximate estimate of its income, and capital value ;

(*e.*) Short particulars of the incumbrances (if any) affecting the trust property ;

(*f.*) A statement whether it is proposed that the judicial trustee should be a sole trustee or should act jointly with other trustees ;

(*g.*) Particulars as to the persons who are in possession of the documents relating to the trust ;

(*h.*) The names and addresses of the beneficiaries and short particulars of their respective interests ;

(*i.*) Any exceptional circumstances specially affecting the administration of the trust.

(2.) An affidavit by the applicant verifying the statement shall be sufficient primâ facie evidence of the particulars contained in the statement.

(3.) Where the applicant cannot gain the information necessary for making the required statement on any point, he must mention the fact in his statement.

Removal of restriction as to appointment of certain persons to be trustees.

5.—(1.) The Court shall not be precluded by any existing practice as to the appointment of trustees from appointing any person to be a judicial trustee by reason of that person being a beneficiary, or a relation or husband or wife of a beneficiary, or a solicitor to the trust or to the trustee or to any beneficiary, or a married woman, or standing in any special position with regard to the trust.

(2.) A person may be appointed to be a judicial trustee of a trust although he is already a trustee of the trust.

Vesting orders.

6. On the appointment of any person to be judicial trustee the Court shall make such vesting or other orders and exercise such other powers as may be necessary for vesting the trust property in the judicial trustee either as sole trustee or jointly with other trustees as the case requires.

Appointment of Official of Court to be Judicial Trustee.

Official judicial trustee.

7.—(1.) Where an official of the Court is appointed judicial trustee, the official solicitor of the Court shall (subject to the provisions hereinafter contained in Rules 29, 30, and 31), be so appointed, unless, for special reasons, the Court directs that some other official of the Court should be so appointed.

(2.) Any official of the Court appointed to be a judicial trustee shall, on his ceasing to hold office, cease to be such a trustee without any formal resignation.

(3.) Where an official of the Court is judicial trustee, any trust property vested in or held by him, shall be vested in and held by him under his official title and not in his own name.

(4.) Where an official of the Court appointed to be a judicial trustee of a trust dies, or ceases to hold office, his successor in office shall, unless the Court otherwise directs, become judicial trustee of the trust without any order of the Court or formal appointment, and the trust property shall, without any conveyance, assignment, or transfer, in such a case become vested in the successor as it was vested in his predecessor in office.

(5.) For the purpose of the definition of "official of the Court," in section five of the Act, any paid office in or connected with the Court shall be a prescribed office.

Where an official of the Court is judicial trustee it shall be lawful for the Bank of England and Bank of Ireland, and for any other corporation, company, or public body (all of which other bodies are hereinafter included in the term "company"), to open and keep accounts of stocks, shares, annuities, and securities (all of which are hereinafter included in the term "stock") in the name of such official under his official *title* without naming him, and the dividends on such stock may from time to time be received, and such stock, or any part thereof may from time to time be transferred by the person for the time being holding such office without any Order or direction of the Court as if the same stood in his own name. And without any Order or direction of the Court such official may, by letter of attorney, authorise the Bank of England, or the Bank of Ireland, or all or any of their proper officers, to sell and transfer all or any part of the stock from time to time standing in the books of the said banks on such account, and to receive the dividends due and to become due thereon. And where, according to the practice of any company (other than the said banks) such stock is accustomed to be sold and transferred, or the dividends to be received by letter of attorney, such official may authorise such company or the proper officer or officers thereof *or any other person*, to sell and transfer all or any part of the stock from time to time standing in the books of such company on such account, and to receive the dividends due and to become due thereon. And notwithstanding Section 20 of 29 & 30 Vict. c. 39, no request of the Treasury shall be necessary to authorise any such account of Government stocks and annuities to be opened, and no order in writing of the Treasury shall be necessary for the sale or transfer of any such Government stocks or annuities.

This rule shall be read with the Judicial Trustees Rules, 1897.

(March, 1899.)

Administration of the Trust.

Statement of trust property.

8.—(1.) A judicial trustee must, unless in any case the Court considers that it is unnecessary, as soon as may be after his appointment, furnish the Court with a complete statement of the trust property, accompanied with an approximate estimate of the income and capital value of each item.

(2.) It shall be the duty of the judicial trustee to give such information to the Court as may be necessary for the purpose of keeping the statement of the trust property correct for the time being.

Security.

9.—(1.) A judicial trustee, if not an official of the Court, must give security to the Court for the due application of the trust property, unless the Court dispenses with security under this rule.

See Rule 25 (2).

(2.) The Court may, on the appointment of a judicial trustee, or at any time during his continuance in office as judicial trustee, dispense with security on the application either of the person who is to be appointed or is judicial trustee, or of any person appearing to the Court to be interested in the trust, and shall do so where a judicial trustee is appointed on the application of a person creating or intending to create a trust, and that person desires that security should be dispensed with, unless for special reasons the Court consider that security is in such a case necessary or desirable.

(3.) The security must be given, either by recognizance, bond, or otherwise, as the Court directs, and with such sureties as the Court approves.

(4.) If the Court is satisfied that sufficient provision is made for the safety of the capital of the trust property, the amount of the security shall, in ordinary cases, be an amount exceeding by twenty per centum the income of the trust property as estimated by the Court.

(5.) The Court may at any time require that the amount or nature of the security given by a judicial trustee under this rule be varied, or that security be given where it has previously been dispensed with, and a judicial trustee shall comply with any such requirement.

(6.) It shall be a condition of every recognizance, bond, or other form of security given under this rule that the judicial trustee shall give immediate notice to the Court of the death or insolvency of any of his sureties.

(7.) Any recognizance, bond, or other form of security given for the purpose of this rule may be vacated in such manner and subject to such conditions as the Court may direct.

(8.) Where security is not dispensed with, the appointment of a person to be judicial trustee shall not take effect until he has given the security required by the Court under this rule.

(9.) Any premium payable by a judicial trustee to any guarantee company on account of his security may, if the Court so directs, be paid out of the trust property.

Trust account at bank and custody of documents.

10.—(1.) When a judicial trustee is appointed, a separate account for receipts and payments on behalf of the trust must be kept in the name of the trustee at some bank approved by the Court.

(2.) All title deeds and all certificates and other documents which are evidence of the title of the trustee to any of the trust property shall be deposited either with that bank or in such other custody as the Court directs.

(3.) The deeds or documents must be deposited in the names of the trustees, and the judicial trustee must give notice to the body or person with whom the deeds or documents are so deposited not

to deliver any of them over to any person except on a request signed by the judicial trustee and countersigned by the officer of the Court, and also to allow any person authorised by the officer of the Court in writing to inspect them during business hours.

(4.) The judicial trustee must deposit with the Court a list of all deeds or documents deposited in any custody in pursuance of this rule, and must give information to the Court from time to time of any variation to be made in the list.

(5.) The judicial trustee must, if at any time directed by the Court, give an order to the bank at which the trust account is kept, not to pay at any one time any sum over a specified amount out of the trust account except on an order countersigned by the officer of the Court.

(6.) Any payments on account of the income of the trust property may be provided for by means of a standing order to the bank at which the trust account is kept.

(7.) The Court may give such directions to the judicial trustee as may, in the opinion of the Court, be necessary or expedient for carrying this rule into effect, and for securing the safety of the trust property.

(8.) Where an official of the Court is judicial trustee, the Court may direct that, instead of a separate account of the receipts and payments on behalf of the trust being kept at some bank approved by the Court, all receipts on behalf of the trust may be dealt with, and all payments on behalf of the trust may be made, in such manner, and subject to such regulations as to the accounts to be kept of the receipts and payments and the procedure to be followed in dealing therewith, as the Treasury direct.

Judicial trustee not to keep money in his hands.

11. A judicial trustee must pay all money coming into his hands on account of his trust without delay to the trust account at the bank, and if he keeps any such money in his hands for a longer time than the Court considers necessary, shall be liable to pay interest upon it at such rate not exceeding five per centum as the Court may fix for the time during which the money remains in his hands.

Directions to judicial trustees.

12.—(1.) A judicial trustee may at any time request the Court to give him directions as to the trust or its administration.

(2.) The request must be accompanied by a statement of the facts with regard to which directions are required, and by the fee required under these rules in respect of a communication from the Court with regard to the administration of the trust.

(3.) The Court may require the trustee or any other person to attend at chambers if it appears that such an attendance is necessary or convenient for the purpose of obtaining any information or explanation required for properly giving directions, or for the purpose of explaining the nature of the directions.

Power to dispense with formal evidence.

13. The Court, if satisfied that there is no reasonable doubt of any fact which affects the administration of a trust by a judicial trustee, may give directions to the judicial trustee to act without formal proof of the fact.

Accounts and Audit.

Accounts and audit.

14.—(1.) The Court shall give directions to a judicial trustee as to the date to which the accounts of the trust are to be made up in

each year, and shall fix in each year the time after that date within which the accounts are to be delivered to it for audit.

For practical directions to judicial trustees as to their accounts, see "The Judicial Trustees Guide," by Master Romer.

(2.) The accounts shall in ordinary cases be audited by the officer of the court, but the Court, if it considers that the accounts are likely to involve questions of difficulty, may refer them to a professional accountant for report, and order the payment to him of such amount in respect of his report as the Court may fix.

Improper Investment.—Passing a judicial trustee's accounts does not exonerate him from liability if an investment made by him is improper, for a Master in the Chancery Division has no power to approve an improper investment, *Hutton* v. *Annan*, (1898) A. C. 289.

Filing and inspection of accounts.

15.—(1.) The accounts of any trust of which there is a judicial trustee, with a note of any corrections made upon the audit, shall be filed as the Court directs.

(2.) The judicial trustee shall send a copy of the accounts or, if the Court thinks fit, of a summary of the accounts, of the trust to such beneficiaries or other persons as the Court thinks proper.

(3.) The Court may, if it thinks fit, having regard to the nature of the relation of the applicant to the trust, allow any person applying to inspect the filed accounts so to inspect them on giving reasonable notice to the officer of the court.

Deductions allowed.

16. A judicial trustee shall, unless the Court otherwise directs, be allowed on the audit of his accounts deductions made on account of his remuneration and allowances under these rules and also on account of the fees paid by him under these rules, but shall not be allowed any deduction on account of the expenses of professional assistance, or his own work or personal outlay, unless the deduction has been authorised by the Court in pursuance of the Act or the Court is satisfied that the deduction is justified by the strict necessity of the case.

Remuneration and Allowances.

Remuneration of judicial trustee.

17.—(1.) Where a judicial trustee is to be remunerated the remuneration to be paid him shall be fixed by the Court, and may be altered by the Court from time to time.

(2.) In fixing the remuneration, regard shall be had to the duties entailed upon the judicial trustee by the trust.

(3.) The Court may make, if it thinks fit, special allowances to judicial trustees for the following matters, to be paid out of the trust property—

(*a*) for the statement of trust property prepared by a judicial trustee on his appointment, an allowance not exceeding ten guineas :

(*b*) for realising and reinvesting trust property, where the property is realised for the purpose of reinvestment, an allowance not exceeding one and half per centum on the amount realised and reinvested ;

(*c*) for realising or investing trust property in any other case, an allowance not exceeding one per centum on the amount realised or invested.

(4.) The Court may also in any year make a special allowance to a judicial trustee, if satisfied that in that year more trouble has been thrown upon the trustee by reason of exceptional circumstances than would ordinarily be involved in the administration of the trust.

(5.) Where a trustee is remunerated, any allowance under this rule may be paid in addition to his remuneration.

(6.) Any remuneration or allowance payable to a judicial trustee shall be paid or allowed to him at such times and in such manner as the Court directs.

Application of remuneration of official of the court.

18. Where an official of the Court is appointed to be a judicial trustee, any remuneration, allowances, or other payments payable to him on account of his services as trustee shall be paid, accounted for, and applied in such manner as the Treasury direct.

Forfeiture of remuneration.

19.—(1.) If the Court is satisfied that a judicial trustee has failed to comply with the Act, or with these Rules, or with any direction of the Court or officer of the Court made in accordance with the Act or these Rules, or has otherwise misconducted himself in relation to the trust, the Court may order that the whole or any part of the remuneration of the trustee be forfeited.

(2.) This rule shall not affect any liability of the judicial trustee for breach of trust or to be removed or suspended.

(3.) A judicial trustee shall have an opportunity of being heard by the Court, before any order is made for the forfeiture of his remuneration or any part of it.

Removal and Suspension of Judicial Trustee.

Suspension of judicial trustee.

20.—(1.) The Court may at any time, either without any application or on the application of any person appearing to the Court to be interested in the trust, suspend a judicial trustee, if the Court considers that it is expedient to do so in the interests of the trust, and a judicial trustee while suspended shall not have power to act as trustee.

(2.) When a judicial trustee is suspended, the Court shall cause notice to be given to such of the persons appearing to the Court to be interested in the trust as the Court directs and also to the persons having the custody of the trust property, and shall give any other directions which appear necessary for securing the safety of the trust property.

Removal of judicial trustee.

21.—(1.) The Court may, either without any application or on the application of any person appearing to the Court to be interested in the trust, remove a judicial trustee if the Court considers that it is expedient to do so in the interests of the trust.

(2.) Any application to remove a judicial trustee must be made by summons.

(3.) A judicial trustee shall not be removed by the Court without an application for the purpose, except after notice has been given to him by the Court of the grounds on which it is proposed to remove him, and of the time and place at which the matter will be heard.

(4.) The Court shall cause a copy of the notice to the trustee to be sent to such of the persons appearing to the Court to be interested in the trust as the Court directs, and the same procedure shall be followed in the matter so far as possible as on a summons to remove a judicial trustee.

Inquiry into conduct of judicial trustee.

22. Where an inquiry into the administration by a judicial trustee of any trust, or into any dealing or transaction of a judicial trustee is ordered, the inquiry shall, unless the Court otherwise directs, be conducted by the officer of the court, and he shall have the same powers in relation thereto as he has in relation to any other inquiry directed by the Court.

Resignation and Discontinuance of Judicial Trustee.

Resignation of judicial trustee.

23.—(1.) If a judicial trustee desires to be discharged from his trust he must give notice to the Court, stating at the same time what arrangements it is proposed to make with regard to the appointment of a successor.

(2.) The Court shall give facilities for the appointment on a proper application of an official of the Court to be judicial trustee in place of a judicial trustee who desires to be discharged, in cases where no fit and proper person appears available for the office, or where the Court considers that such an appointment is convenient or expedient in the interests of the trust.

Discontinuance of judicial trustee.

24.—(1.) Where there is a judicial trustee of a trust, the Court may at any time, on the application made by summons of any person appearing to the Court to be interested in the trust, order that there shall cease to be a judicial trustee of the trust, whether the person who is judicial trustee continues as trustee or not.

(2.) If the Court is satisfied that all the persons appearing to the Court to be interested in the trust concur in an application under this Rule, the Court shall accede to the application, and in any case shall ascertain as far as may be the wishes of those appearing to the Court to be interested in the trust with regard to the application.

(3.) Where an order is made under this Rule, the Court shall make all such orders as may be necessary for carrying it into effect, and where in pursuance of any such order a new trustee is appointed in the place of an official of the Court, shall make all such vesting or other orders and exercise all such other powers as may be necessary for vesting the trust property in the new trustee, either as sole trustee or jointly with other trustees as the case requires.

Special Trusts.

Executors and administrators.

25.—(1.) Any person who is an executor or administrator may be appointed a judicial trustee for the purpose of the collection and distribution of the estate of a deceased person in the same manner and subject to the same provisions as in the case of an ordinary trust.

(2.) Where an administrator has given an administration bond, he need not give security as a judicial trustee under these Rules unless the Court directs that he is to do so.

Special trusts.

26.—(1.) An official of the Court shall not be appointed or act as judicial trustee for any persons in their capacity as members or debenture holders of, or being in any other relation to, any incorporated or unincorporated company, or any club.

(2.) Where the circumstances of any trust of which an official of the court is a judicial trustee, or of which it is proposed to appoint an official of the court to be a judicial trustee, involve the carrying on of any trade or business, special intimation of the fact shall be given to the Court either by the judicial trustee or by the person making the application for the appointment of the judicial trustee, as the case may be, and the Court shall specially consider the facts of the case with a view to determining whether the official of the Court should continue or be appointed as judicial trustee, and whether any special conditions should be made or directions given with a view to ensuring the proper supervision of the trade or business.

Exercise of the Powers of the Court.

Exercise of powers of Court.

27. For the purpose of the Act or these Rules the officer of the Court may exercise any power which may be exercised by the Court (including the power of making an order for the appointment of a judicial trustee or making any vesting order), and may perform any duty to be performed by the Court, and may hear and investigate any matter which may be heard or investigated by the Court, subject in any case to the right of any party to bring any particular point before the Judge.

Communication between judicial trustee and Court.

28.—(1.) It shall not be necessary to take out a summons for any purpose under the Act or these Rules, except in cases where a summons is required by these Rules, or where the Court directs a summons to be taken out.

(2.) Where a judicial trustee desires to make any application or request to the Court, or to communicate with the Court as to the administration of his trust, he may do so by letter addressed to the officer of the Court without any further formality.

(3.) The Court may give any direction to a judicial trustee with regard to the administration of his trust by letter signed by the officer of the Court, and addressed to the trustee without drawing up any order or formal document.

(4.) For the purpose of the attendance at chambers of the judicial trustee or any other person connected with the trust for purposes relating to the administration of the trust, the officer of the Court may make such appointments as he thinks fit by letter without the service of formal notices.

(5.) Any document may be supplied for the use of the Court by leaving it with, or sending it by post to, the officer of the Court.

District Registries.

District registries.

29.—(1.) An originating summons under these Rules, for the purpose of an application to appoint a judicial trustee, may be sealed and issued in a district registry, and appearances thereon shall be entered in that registry.

(2.) Where a judicial trustee of a trust is appointed on an originating summons taken out in a district registry, or an application in any cause or matter pending in a district registry, all proceedings with respect to the trust and the administration thereof under the Act or these Rules shall, unless the Court otherwise directs, be taken in the district registry.

(3.) Where proceedings under the Act or these Rules are taken in the district registry, the official of the Court to be appointed judicial trustee where an official of the Court is to be so appointed, shall not be the official solicitor, unless the Court for special reasons otherwise directs.

(4.) For the purpose of the Act and these Rules the Court may transfer any trust of which there is a judicial trustee from a district registry to London, or from London to a district registry, or from one district registry to another district registry, according as it appears convenient for the administration of the trust.

Palatine Courts.

Palatine Courts.

30.—(1.) These Rules shall apply to a palatine Court as respects trusts within the jurisdiction of that Court, subject to such modifi-

cations (if any) as may be made by rules of that Court for the purpose of making these rules properly applicable having regard to any special practice of the Court, or the duties of the officers attached to the court.

(2.) Where proceedings under the Act or these Rules are taken in the palatine Court, the official of the Court to be appointed judicial trustee where an official of the court is to be so appointed, shall not be the official solicitor, unless the palatine Court for special reasons otherwise directs.

County Courts.

County court jurisdiction.

31.—(1.) For the purpose of the Act and these Rules the jurisdiction of the county Court judge shall extend to any trust in which the trust property does not exceed in value five hundred pounds, as if that jurisdiction had been given under section sixty-seven of the County Courts Act, 1888, but that jurisdiction shall be exercised only in a metropolitan county Court, or in a county Court for the time being having bankruptcy jurisdiction.

51 & 52 Vict. c. 43.

(2.) Where the district of any county Court (other than a metropolitan county Court) or any part of such a district, is attached for the purpose of bankruptcy jurisdiction to some Court other than the county court of the district, that district or part shall be attached to the same Court for the purpose of jurisdiction under the Act and these Rules.

(3.) Where proceedings under the Act or these Rules are taken in the county Court, the official of the Court to be appointed judicial trustee, where an official of the Court is to be so appointed, shall not be the official solicitor, unless the Court for special reasons otherwise directs.

(4.) In the application of these Rules to the county Court a petition shall be substituted for a summons, whether an ordinary or originating summons.

46 & 47 Vict. c. 52.

(5.) For the purposes of this Rule the expression "Metropolitan County Court" means any of the county courts mentioned in the third schedule of the Bankruptcy Act, 1883.

Fees.

Fees.

32.—(1.) The fees mentioned in the schedule to these Rules shall be paid in respect of the matters therein mentioned.

(2.) The fees paid by a judicial trustee may be deducted out of the income of the trust property unless the Court otherwise directs.

(3.) Any fees payable under these rules may be remitted by post, and may be so remitted in any manner except by means of postage stamps or coins.

(4.) All fees payable under these Rules in the High Court, palatine Court, or county Court shall, except as provided by these Rules, be subject to similar provisions as to payment, account, and application as other fees payable in those Courts respectively.

Officer of the Court.

Meaning of "officer of Court."

33. In these Rules the expression "officer of the Court" means—

(*a*) as regards proceedings in the High Court other than proceedings in a district registry the Chancery Master, that

is to say, the Master attached to the chambers of the judge of the Chancery Division to whom the matter is assigned; and

(*b*) as regards proceedings in a district registry any registrar of that registry; and

(*c*) as regards proceedings in a palatine Court, any registrar of that Court;

(*d*) as regards proceedings in the county Court, the registrar of the county Court.

Supplemental.

Rules to be construed as part of the general rules of Court.

34. These Rules shall be construed, so far as they relate to the High Court, as one with the Rules of the Supreme Court, 1883, and any Rules amending those Rules, so far as they relate to a palatine Court, as one with the rules of that Court, and so far as they relate to the county Court, as one with the County Court Rules, 1889, and any rules amending those rules.

Application of Interpretation Act, 52 & 53 Vict. c. 63.

35. The Interpretation Act, 1889, shall apply for the purpose of the interpretation of these Rules as it applies for the purpose of the interpretation of an Act of Parliament.

(Signed) HALSBURY, C.

August 31, 1897.

SCHEDULE.

FEES.

The following fees shall be payable under these Rules—

	£	s.	d.
1. In respect of any thing or matter for which a fee is provided under the Orders in force for the time being with regard to supreme Court, palatine Court, or county court, fees, as the case may be	The fee so provided.		
In respect of any communication from the Court with regard to the administration of the trust	0	2	6
For filing the statement of the trust property . . .	0	10	0
For filing any alteration in the statement	0	5	0
For filing the accounts of the trust	0	5	0
For filing any other document relating to the trust . .	0	2	6
For auditing the accounts of the trust when audited by the officer of the court, for every £100 or fraction of £100 of the gross amount received as income of the trust without deducting any payments	0	2	6
On the audit of the accounts of the trust where they are referred to a professional accountant for report . .	A fee equal to the amount paid to the accountant		
On the inspection of filed accounts for each hour or part of an hour occupied	0	2	6
not exceeding on one day	0	10	0

CONVEYANCING ACT, 1881, s. 48.

Stat. 44 & 45 Vict. c. 41. Deposit of original instruments creating powers of attorney.

48.—(1.) An instrument creating a power of attorney, its execution being verified by affidavit, statutory declaration, or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the Central Office of the Supreme Court of Judicature.

(2.) A separate file of instruments so deposited shall be kept and any person may search that file, and inspect every instrument so deposited, and an office copy thereof shall be delivered out to him on request.

(3.) A copy of an instrument so deposited may be presented at the office, and may be stamped or marked as an office copy, and when so stamped or marked shall become and be an office copy.

(4.) An office copy of an instrument so deposited shall without further proof be sufficient evidence of the contents of the instrument and of the deposit thereof in the Central Office.

(5.) General Rules may be made for purposes of this section, regulating the practice of the Central Office, and prescribing, with the concurrence of the Commissioners of her Majesty's Treasury, the fees to be taken therein.

(6.) This section applies to instruments creating powers of attorney executed either before or after the commencement of this Act.

See Wolstenholme Con. Acts, 6th ed. p. 156.

RULE UNDER ABOVE SECTION.

6. *An alphabetical index of the names of the grantors of all powers of attorney filed under section* 48 *of the Conveyancing and Law of Property Act*, 1881, *shall be prepared and kept by the proper officer, and any person may search the index upon payment of the prescribed fee. No person shall take copies of or extracts from any power of attorney or other document filed under that section and produced for his inspection. All copies or extracts which may be required shall be made by the Office.*

A solicitor filing a power of attorney may, *at the time of filing*, bring in a copy or copies to be marked as office copies, but by virtue of this rule, he is precluded, *at any subsequent time*, from bringing in a copy to be examined and marked as an office copy. All copies made subsequent to filing must be made in the office.

CONVEYANCING ACT, 1882, s. 2.

Searches.

Official negative and other certificates of searches for judgments, crown debts, &c.

2.—(1.) Where any person requires, for purposes of this section search to be made in the Central Office of the Supreme Court of Judicature for entries of judgments, deeds, or other matters or documents, whereof entries are required or allowed to be made in that office by any Act described in Part I. of the First Schedule to the Conveyancing Act of 1881, or by any other Act, he may deliver in the office a requisition in that behalf, referring to this section.

See O. 61, rr. 9, 23, 24.

(2.) Thereupon the proper officer shall diligently make the search required, and shall make and file in the office a certificate setting forth the result thereof; and office copies of that certificate shall be issued on requisition, and an office copy shall be evidence of the certificate.

(3.) In favour of a purchaser, as against persons interested under or in respect of judgments, deeds, or other matters or documents, whereof entries are required or allowed as aforesaid, the certificate, according to the tenour thereof, shall be conclusive, affirmatively or negatively, as the case may be.

"**Purchaser.**"—Includes a lessee or mortgagee or intending purchaser, lessee or mortgagee, or other person who for valuable consideration takes or deals for property. S. 1 (2).

"**Conclusive.**"—Cf. 31 Sol. Jo. p. 247; Elphinstone and Clark on Searches, 166.

(4.) Every requisition under this section shall be in writing, signed by the person making the same, specifying the name against which he desires search to be made, or in relation to which he requires an office copy certificate of result of search, and other sufficient particulars; and the person making any such requisition shall not be entitled to a search, or an office copy certificate, until he has satisfied the proper officer that the same is required for the purposes of this section. 39 & 40 Vict. c. 59; 44 & 45 Vict. c. 68.

(5.) General Rules shall be made for the purposes of this section, prescribing forms and contents of requisitions and certificates, and regulating the practice of the office, and prescribing, with the concurrence of the Commissioners of Her Majesty's Treasury, the fees to be taken therein; which Rules shall be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and may be made, at any time after the passing of this Act, to take effect on or after the commencement of this Act.

(6.) If any officer, clerk, or person employed in the office commits, or is party or privy to, any act of fraud or collusion, or is wilfully negligent, in the making of or otherwise in relation to any certificate or office copy under this section, he shall be guilty of a misdemeanour.

(7.) Nothing in this section or in any Rule made thereunder shall take away, abridge, or prejudicially affect any right which any person may have independently of this section to make any search in the office; and every such search may be made as if this section or any such Rule had not been enacted or made.

(8.) Where a solicitor obtains an office copy certificate of result of search under this section, he shall not be answerable in respect of any loss that may arise from error in the certificate.

(9.) Where the solicitor is acting for trustees, executors, agents, or other persons in a fiduciary position, those persons also shall not be so answerable.

(10.) Where such persons obtain such an office copy without a solicitor, they shall also be protected in like manner.

(11.) Nothing in this section applies to deeds inrolled under the Fines and Recoveries Act, or under any other Act, or under any statutory Rule.

(12.) This section does not extend to Ireland.

Forms.—See *infra*.

Searches generally.—See Elphinstone and Clark on Searches, and Appendix; Dart V. & P. 6th ed. p. 524; Wolstenholme Con. Acts, 6th ed. p. 174; Land Charges and Searches Act, 1888. R. S. C., O. 61, rr. 9, 23, 24.

RULES UNDER ABOVE SECTION.

(See R. S. C., O. 61, rr. 9, 23.)

1. *Every requisition for an official search shall state the name and address of the person requiring the search to be made. Every requisition and certificate shall be filed in the office where the search was made.*

There is no registration after 2 o'clock, O. 61, r. 22.
The practice is to require 48 hours' notice for an official search.

2. *Every person requiring an official search to be made pursuant to section 2 of the Conveyancing Act*, 1882, *shall deliver to the officer a declaration according to the Forms I. and II. in the Appendix, purporting to be signed by the person requiring the search to be made, or by a solicitor, which declaration may be accepted by the officer as sufficient evidence that the search is required for the purposes of the said section. The declaration may be made in the requisition, or in a separate document.*

3. *Requisitions for searches under section 2 of the Conveyancing Act*, 1882, *shall be in the Forms III. to VI. in the Appendix, and the certificates of the results of such searches shall be in the Forms VII. to X., with such modifications as the circumstances may require.*

4. *Where a certificate setting forth the result of a search in any name has been issued, and it is desired that the search be continued in that name, to a date not more than one calendar month subsequent to the date of the certificate, a requisition in writing in the Form XI. in the Appendix may be left with the proper officer, who shall cause the search to be continued, and the result of the continued search shall be endorsed on the original certificate and upon any office copy thereof which may have been issued, if produced to the officer for that purpose. The endorsement shall be in the Form XII. in the Appendix with such modifications as circumstances require.*

5. *Every person shall upon payment of the prescribed fee be entitled to have a copy of the whole or any part of any deed or document enrolled in the Enrolment Department of the Central Office.*

For Fees, see Order as to Court Fees, *ante*, Part II.

APPENDIX OF FORMS FOR SEARCHES,

Under Conveyancing &c., Act, 1882, *S.* 2.

FORM I.

Declaration by Separate Instrument as to Purposes of Search.

Supreme Court of Judicature,
Central Office.
To the Clerk of Enrolments
or The Registrar of
Royal Courts of Justice,
London.

In the matter of *A.B.* and *C.D.*

I declare that the search [*or* searches] in the name [*or* names] of required to be made by the requisition for search, dated the is [*or* are] required for the purposes of a sale [*or* mortgage, *or* lease, *or as the case may be*], by *A.B.* to *C.D.*

Signature,
Address, and
Description.

Dated

FORM II.

Declaration as to Purposes of Search contained in the Requisition.

I declare that the above-mentioned search is required for the purposes of a sale [*or* mortgage, *or* lease, *or as the case may be*], by *A.B.* to *C.D.*

FORM III.

Requisition for Search in the Enrolment Office under the Conveyancing Act, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

Requisition for Search.

To the Clerk of Enrolments,
Royal Courts of Justice,
London

In the matter of *A.B.* and *C.D.*

Pursuant to section 2 of the Conveyancing Act, 1882, search for deeds and other documents enrolled during the period from 18 to 18 both inclusive, in the following name [*or* names].

Surname.	Christian Name or Names.	Usual or last known Place of Abode.	Title, Trade, or Profession.

(*Add declaration, Form II.*)

(*State if an office copy of the certificate is desired, and whether it is to be sent by post or called for.*)

Signature, address, and description of person requiring the search.

Dated

FORM IV.

Requisition for Search in the Bills of Sale Department under the Conveyancing Act, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

Requisition for Search.

To the Registrar of Bills of Sale,
Royal Courts of Justice,
London.

In the matter of *A.B.* and *C.D.*

Pursuant to section 2 of the Conveyancing Act, 1882, search for instruments registered or re-registered as bills of sale during the period from 18 to 18 both inclusive, in the following name [*or* names].

Surname.	Christian Name or Names.	Usual or last known Place of Abode.	Title, Trade, or Profession.

(*Add declaration, Form II.*)

(*State if an office copy of the certificate is desired, and whether it is to be sent by post or called for.*)

Signature, address, and description of person requiring the search.

Dated

FORM V.

Requisition for Search in the Registry of Certificates of Acknowledgments of Deeds by Married Women under the Conveyancing Act, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

Requisition for Search.

To the Registrar of Certificates of Acknowledgments of Deeds by Married Women
Royal Courts of Justice,
London.

In the matter of *A.B.* and *C.D.*

Pursuant to section 2 of the Conveyancing Act, 1882, search for Certificates of Acknowledgments of Deeds by Married Women during the

period from 18 to 18 both inclusive, according to the particulars mentioned in the schedule hereto.

THE SCHEDULE.

Surname.	Christian Name or Names of Wife and Husband.	Date of Certificate if the Search relates to a particular Certificate.	Date of Deed, if the Search relates to a particular Deed.	County, Parish, or Place in which the Property is situate, or other description of the Property.

(*Add declaration, Form II.*)

(*State if an office copy of the certificate is desired, and whether it is to be sent by post or called for.*)

Signature, address, and description of person requiring the search.

Dated .

FORM VI.

Requisition for Search in the Registry of Judgments under the Conveyancing Act, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

Requisition for Search.

To the Registrar of Judgments,
Royal Courts of Justice,
London.

In the matter of *A.B.* and *C.D.*

Pursuant to section 2 of the Conveyancing Act, 1882, search for judgments, revivals, decrees, orders, rules, and lis pendens, and for judgment at the suit of the Crown, statutes, recognizances, Crown bonds, inquisitions, and acceptances of office for the period from 18 to 18 both inclusive and for executions for the period from the 29th July, 1864 [*or as the case may require*] to the , 18 , both inclusive, and for annuities for the period from the 26th April, 1855 [*or as the case may require*] to the , 18 , both inclusive, in the following name [*or* names].

Surname.	Christian Name or Names.	Usual or last known Place of Abode.	Title, Trade, or Profession.

[*Add declaration, Form II.*]

[*State if an office copy of the certificate is desired, and whether it is to be sent by post or called for.*]

Signature, address, and description of person requiring the search.

Dated

FORM VII.

Certificate of Search by Enrolment Department under the Conveyancing Act, 1882, s. 2.

Supreme Court of Judicature,
Central Office,
Enrolment Department.

Certificate of Search pursuant to Section 2 of the Conveyancing Act, 1882.

In the matter of *A.B.* and *C.D.*

This is to certify that a search has been diligently made in the Enrolment Office for deeds and other documents in the name [*or* names] of for the period from to , both inclusive, and that no deed or other document has been enrolled in the said office in that name [*or* in any one or more of those names] during the period aforesaid, *or* and that except the described in the schedule hereto no deed or document has been enrolled in that name [*or* in any one or more of those names] during the period aforesaid.

THE SCHEDULE.

Dated .

FORM VIII.

Certificate of Search by the Registrar of Bills of Sale under the Conveyancing Act, 1882.

Supreme Court of Judicature,
Central Office,
Bills of Sale Department.

Certificate of Search pursuant to Section 2 of the Conveyancing Act, 1882.

In the matter of *A.B.* and *C.D.*

This is to certify that a search has been diligently made in the Register of Bills of Sale in the name [*or* names] of , for the period from , 18 , to , 18 , both inclusive, and that no instrument has been registered or re-registered as a bill of sale in that name [*or* in any one or more of those names] during that period, *or*, and that except the described in the schedule hereto, no instrument has been registered or re-registered as a bill of sale in that name [*or* in any one or more of those names] during the period aforesaid.

THE SCHEDULE.

Dated .

FORM IX.

Certificate of Search by Registrar of Certificates of Acknowledgments of Deeds by Married Women under the Conveyancing Act, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

Registry of Certificates of Acknowledgments of Deeds by Married Women.

Certificate of Search pursuant to Section 2 of the Conveyancing Act, 1882.

In the matter of *A.B.* and *C.D.*

This is to certify that a search has been diligently made in the Office of the Registrar of Certificates of Acknowledgments of Deeds by Married Women in the name [*or* names] of , for the period from , to , 18 , both inclusive, for a certificate dated the *or* for certificates of acknowledgment of a deed dated the , *or* for certificates of acknowledgments of deeds relating to (*fill in the description of the property from the Requisition*), , and that no such certificate has been filed in that name [*or* in any one or more of those names] during the period aforesaid. , *or* and that except the certificate [*or* certificates] described in the Schedule hereto, no such certificate has

been filed in that name [*or* in any one or more of those names] during the period aforesaid.

Surname.	Christian Names of Wife and Husband.	Date of Certificate.	Date of Deed.	County, Parish, or Place in which Property situated, or other description of the Property.

Dated day of , 188 .

FORM X.

Certificate of Search by Registrar of Judgments under Conveyancing Act, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

The Registry of Judgments.

Certificate of Search pursuant to Section 2 of the Conveyancing Act, 1882

In the matter of *A.B.* and *C.D.*

This is to certify that a search has been diligently made in the Office of the Registrar of Judgments for judgments, revivals, decrees, orders, rules, lis pendens, judgments at the suit of the Crown, Statutes, recognizances, Crown bonds, inquisitions, and acceptances of office, for the period from , 18 , to , 18 , both inclusive, and for executions for the period from , 18 , to , 18 , both inclusive, and for annuities for the period from , to . 18 . both inclusive, in the name [*or* names] of , and that no judgment, revival, decree, order, rule, lis pendens, judgment at the suit of the Crown, statute, recognizance, Crown bond, inquisition, acceptance of office, execution, or annuity has been registered or re-registered in that name [*or* in any one or more of those names] during the respective periods covered by the aforesaid searches, *or* and that except the mentioned in the Schedule hereto, no judgment, revival, decree, order, rule, lis pendens, judgment at the suit of the Crown, statute, recognizance, Crown bond, inquisition, acceptance of office, execution, or annuity has been registered or re-registered in that name [*or* in any one or more of those names] during the respective periods covered by the aforesaid search.

THE SCHEDULE.

Dated the day of , 188 .

FORM XI.

Requisition for Continuation of Search under the Conveyancing Act, 1882.

Supreme Court of Judicature,
Central Office.

Requisition for continuation of Search.

To the Clerk of Enrolments
or The Registrar of
Royal Courts of Justice,
London, W.C.

In the matter of *A.B.* and *C.D.*

Pursuant to section 2 of the Conveyancing Act, 1882, continue the search for [], made pursuant to the requisition dated the day of

18 , in the name [*or* names] of , from the day of to the day of 18 , both inclusive.

Signature, address, and description of person requiring the search.

Dated ,

FORM XII.

Certificate of Result of continued Search under the Conveyancing Act, 1882, s. 2, to be endorsed on Original Certificate.

This is to certify that the search [*or* searches] mentioned in the within-written certificate has [*or* have] been diligently continued to the day of , 18 , and that up to and including that date [except the mentioned in the schedule hereto (*these words to be omitted where nothing is found*)], no deed or other document has been enrolled, *or* no instrument has been registered or re-registered as a bill of sale, *or* no certificate has been filed, *or* no judgment, revival, decree, order, rule, lis pendens, judgment at the suit of the Crown, statute, recognizance, Crown bond, inquisition, acceptance of office, execution or annuity, has been registered or re-registered in the within-mentioned name [*or* in any one or more of the within-mentioned names].

Dated

RULES OF THE SUPREME COURT

UNDER THE

CHARITABLE TRUSTS (RECOVERY) ACT, 1891.

1. In these rules "the Act" means the Charitable Trusts (Recovery) Act, 1891.

"The Court" means the Chancery Division of the High Court.

2. Proceedings by the Board under the Act may be commenced by originating summons.

3. It shall not be necessary to make the trustees (if any) or persons acting in the administration of the charity, or the official trustee of charity lands, or the official trustees of charitable funds, parties to any proceeding under the Act, unless the Court or a Judge otherwise orders; and for the purposes of proceedings under the Act, the Board shall be deemed to represent all parties interested in the charity.

4. The notice in section 5, sub-section (1), of the Act mentioned shall be a two days' notice in writing, and shall be served on the opposite party or his solicitor; but the Court or a Judge may give leave for shorter or substituted or other notice, and the notice may be given before appearance.

5. Any order for production of documents or other discovery against he Board shall be made upon their secretary for the time being.

6. These rules shall commence on the fourteenth of June, 1892, and may be cited as the Rules of the Supreme Court (Charitable Trusts Recovery), 1892.

(Signed) HALSBURY, C.
COLERIDGE, C.J.
NATH. LINDLEY, L.J.
EDWARD E. KAY, L.J.
C. E. POLLOCK, B.
A. L. SMITH, J.

The 27th day of May, 1892.

RULES OF THE SUPREME COURT

UNDER THE

LOCAL GOVERNMENT ACT, 1888.

SECTION 29.

The summary proceeding for submitting any question for decision to the High Court of Justice under the twenty-ninth section of the Local Government Act, 1888, shall be by special case to be agreed upon by the parties, or in default of such agreement to be settled by an arbitrator agreed upon by the parties or (if necessary) appointed by a judge at chambers, or to be settled by a judge at chambers.

The special case, when settled, shall be filed at the Crown Office Department, at the Central Office of the Supreme Court, by the Chairman of Quarter Sessions, the County Council, or the local authority concerned, within eight days from the settlement thereof, and shall be put into the Crown paper for argument as if it were a case stated by Justices under 20 & 21 Vict. c. 43.

This rule shall come into operation on the 1st of October, 1892.

The 10th of August, 1892.

See the Registration Order, 1895; Order in Council, 8 March, 1895.

RULES OF THE SUPREME COURT

UNDER THE

LOCAL GOVERNMENT ACT, 1894.

SECTION 70.

1. The summary proceeding for submitting any question for decision to the High Court of Justice under the seventieth section of the Local Government Act, 1894, shall be by special case to be agreed upon by the parties, or in default of such agreement to be settled by an arbitrator agreed upon by the parties, or if necessary, appointed by a Judge at Chambers, or to be settled by a Judge in Chambers.

2. The special case when settled shall be filed at the Crown Office Department at the Central Office of the Supreme Court by the Chairman

of Quarter Sessions, the County Council, or the local authority concerned within eight days from the settlement thereof, and shall be put into the Crown paper for argument as if it were a case stated by Justices under 20 & 21 Vict. c. 43.

This rule shall come into operation on the 1st day of January, 1895.

10 December, 1894.

RULES OF THE SUPREME COURT

UNDER THE

LOCAL GOVERNMENT ACT, 1894.

ELECTION PETITIONS.

The Rules of 1883, made by the Judges on the Rota for the trial of Parliamentary election petitions, for the effectual execution of Part IV. of the Municipal Corporations Act, 1882, subject to this Rule, shall (except as to the amount of security) apply to petitions to be presented in respect of elections under the Local Government Act, 1894, and the Rules made or to be made by the Local Government Board thereunder.

References in the said Rules of 1883 to a municipal election, the town clerk, and the borough, shall be read with the substitutions made therefor by the said Rules of the Local Government Board under the Local Government Act, 1894.

The Local Government Act, 1894, shall be substituted for the Municipal Corporations Act, 1882, in the forms prescribed by the said Rules of 1883.

January, 1895.

RULES OF THE SUPREME COURT

UNDER THE

LOCAL GOVERNMENT ACT, 1894.

QUESTIONS FOR THE HIGH COURT UNDER SECTION 70 (1).

Whereas doubts have arisen concerning the application of the Rule of the Supreme Court (December 10, 1894) as to questions submitted for decision to the High Court of Justice under the 70th section of the Local Government Act, 1894; it is hereby declared that the said Rule applies only to the first sub-section of that section.

Signed and certified to be urgent, April 6th, 1895.

RULES OF THE SUPREME COURT

UNDER THE

MERCHANT SHIPPING ACT, 1894.

1. [*General Jurisdiction under the Act.*]—The jurisdiction of the High Court under the Merchant Shipping Act, 1894 (in these Rules

referred to as "the Act"), with the exception of that under sections twenty-eight, thirty, and five hundred and four of the Act, shall be assigned to the Probate, Divorce and Admiralty Division.

2. [*Application under s. 30 of Act.*]—Any application under section thirty of the Act, 1894, may be made by summons or otherwise, and either *ex parte* or upon service of notice on any person as the Court may direct.

3. [*Application as to Excess of Wages Paid on Seamen Volunteering into the Navy.*]—(1) Any application to the High Court under section one hundred and ninety-seven of the Act shall be made to the Admiralty Registrar, and shall be in such form, and shall be accompanied by such documents and by such statements, whether on oath or otherwise, as the President of the Probate, Divorce and Admiralty Division directs.

(2) The Registrar shall, on receiving the application, give written notice thereof and of the sum claimed to the Admiralty, and shall proceed to examine the application, and shall, if necessary, apply to the Registrar-General of Shipping and Seamen to produce any papers in his possession relating thereto, and may call for further evidence.

(3) If the Registrar considers that the whole of the claim is just, he shall give a certificate accordingly, but if he considers that the claim or any part thereof is not just, he shall give notice of his opinion in writing under his hand to the person making the application, or his solicitor or agent.

(4) If within sixteen days from the giving of the last-mentioned notice the person to whom the notice is given does not cause to be left at the Admiralty Registry a written notice demanding that the application be referred to the Judge, the Registrar shall finally decide thereon, and certify accordingly.

(5) If the notice is left as aforesaid, the application shall stand referred to the Judge in Chambers, and his decision thereon shall be final, and the Registrar shall certify the same accordingly.

(6) The Judge and Registrar shall in any proceeding under these Rules have full power to administer oaths, and to exercise all the ordinary powers of the Court, as in any other proceeding within its jurisdiction; and the Judge or Registrar (as the case may be) may, if he thinks fit, allow for the costs of any such proceeding any sum not exceeding five pounds for each seaman in respect of whom application is made; and that sum shall be added to the sum authorized to be repaid under the Act, and shall be certified by the Registrar accordingly.

4. These Rules may be cited as the Rules of the Supreme Court (Merchant Shipping), 1894.

The 10th of December, 1894.

RULES OF THE SUPREME COURT

UNDER THE

FINANCE ACT, 1894.

SECTION 10.

1. Any aggrieved person within the meaning of section 10, sub-section (1), of the Finance Act, 1894, who desires to appeal to the High Court in any of the cases mentioned in the said sub-section shall, within one month from the date of the notification to him or his solicitor of the

decision or claim of the Commissioners, deliver to them a written statement of the grounds of such appeal.

The statement shall state specifically the several grounds upon which the appellant contends that the decision or claim of the Commissioners was erroneous, and if he contends that the value put upon any property by the Commissioners is excessive, he shall therein identify such property and state the value which he contends should be put upon the same.

2. The Commissioners shall, within a month from the delivery to them of the statement of the grounds of appeal, notify to the appellant or his solicitor whether they have withdrawn the decision or claim appealed against or have determined to maintain the same, either in whole or in part.

3. At any time thereafter not exceeding one month from the date of the notification by the Commissioners of their determination to maintain their decision or claim either in whole or in part, the appellant may proceed with his appeal by way of petition to the High Court, such petition to be filed in the Queen's Remembrancer's department of the Central Office, and a copy thereof served by the appellant upon the Commissioners.

4. Subject to the provisions of these Rules the appellant shall not in his petition state or at the hearing be allowed to rely upon any grounds of appeal not specifically set forth in the statement of the grounds of appeal.

5. Upon the filing of the petition and the service of a copy thereof upon the Commissioners, the matter shall be deemed to be completely at issue, and within seven days thereafter the appellant, or in default thereof the Commissioners, may set the petition down for hearing upon the Revenue side of the Queen's Bench Division of the High Court.

6. The Court or a Judge may order that the petition shall be heard before a Judge of the Chancery Division, and Order XLIX., Rule 7, shall apply to any such order.

7. Unless by consent, or otherwise ordered, only oral evidence shall be admitted at the hearing.

8. In cases where pursuant to Rule 7 evidence may be by affidavit, the affidavits shall be filed in the Queen's Remembrancer's Department.

9. The Crown shall have the same right as an ordinary suitor of administering interrogatories and of obtaining discovery and inspection of documents.

10. The Court or a Judge may, at any time before or at the hearing, allow the appellant to amend his petition, upon such terms as the Court or Judge may think right.

11. Order XIX., Rule 27 of the Rules of the Supreme Court, 1883, shall apply to the petition which shall be deemed to be a pleading within that rule.

12. Applications for leave to bring an appeal without payment, or on part payment only of the duty, under the provisions of the 4th subsection of the 10th section of the Finance Act, 1894, shall be by summons before a Judge at Chambers, and the appellant shall deliver to the Commissioners, with the summons, a copy of any affidavit which the appellant intends to use at the hearing of the summons.

13. These Rules may be cited as the Rules of the Supreme Court (Finance Act), 1895, and shall come into operation forthwith.

Signed and certified as urgent, the 14th day of January, 1895.

PART VI.

ORDERS IN COUNCIL, REGULATIONS, &c.

CIRCUITS OF THE JUDGES.

(See J. A. 1875, s. 23.)

Order in Council, 28 July, 1893.—At the Court at Osborne House, Isle of Wight, the 28th day of July, 1893. Present, the Queen's Most Excellent Majesty in Council.

Whereas by the twenty-third section of the Supreme Court of Judicature Act, 1875, it is enacted (amongst other things) that Her Majesty may, at any time after the passing of that Act, and from time to time by Order in Council, provide in such manner and subject to such regulations as to Her Majesty may seem meet for all or any of the following matters:—

1. For the discontinuance, either temporarily or permanently, wholly or partially, of any existing Circuit, and the formation of any new Circuit by the union of any counties or parts of counties, or partly in one way and partly in the other, or by the constitution of any county or part of a county to be a Circuit by itself, and in particular for the issue of Commissions for the discharge of civil and criminal business in the county of Surrey to the Judge appointed to sit for the trial by jury of causes and issues in Middlesex or London, or any of them; and,
2. For the appointment of the place or places at which Assizes are to be holden on any Circuit; and,
3. For altering by such authority, and in such manner as may be specified in the Order, the day appointed for holding the Assizes at any place on any Circuit in any case where by reason of the pressure of business or other unforeseen cause it is expedient to alter the same; and,
4. For the regulation, so far as may be necessary for carrying into effect any Order under that section, of the venue in all cases, civil and criminal, triable on any Circuit or elsewhere:

And that Her Majesty may, from time to time by Order in Council, alter, add to, or amend any Order in Council made in pursuance of that section, and in making any Order under that section, may give any directions which it appears to Her Majesty to be desirable to give for the purpose of giving full effect to such Order:

Provided that every Order in Council made under that section shall be laid before each House of Parliament within such time, and shall be subject to be annulled in such manner as is in that Act provided:

And that any Order in Council purporting to be made in pursuance of that section shall have the same effect in all respects as if it were enacted in that Act:

And that the power thereby given to Her Majesty shall be deemed to be in addition to and not in derogation of any power already vested in Her Majesty in respect of the matters aforesaid; and all enactments in relation to Circuits, or the places at which Assizes are to be holden, or otherwise in relation to the subject-matter of any Order under that section, shall, so far as such enactments are inconsistent with such order, be repealed thereby, whether such repeal is thereby expressly made or not:

And whereas at meetings of the Judges of the Supreme Court of Judicature, duly assembled at Her Majesty's Royal Courts of Justice on the seventeenth day of May and the twenty-first day of June, one thousand eight hundred and ninety-three, pursuant to the seventy-fifth section of the Supreme Court of Judicature Act, 1873, it was (amongst other things) resolved that the Assizes respectively should for the future, *so far as may be practicable and the business to be done may allow*, be fixed in accordance with the scheme to their resolution annexed: but so, nevertheless, that the Northern, South-Eastern, North Wales and Western Circuits shall commence on the days named in the scheme: provided that if any of those days falls on a Sunday the Circuits shall commence on the following day, and that whenever October twenty-fourth falls on a Sunday, the Autumn Circuits fixed to commence on October twenty-fifth shall commence on October twenty-sixth:

Now therefore, Her Majesty, by and with the advice of Her Most Honourable Privy Council, having taken in consideration the matters aforesaid, under and by virtue of the authority aforesaid, and of all or any other statutes, laws, powers, and authorities enabling her in that behalf, is pleased to order, and it is hereby ordered, accordingly, as follows:

(i.) The *Commission days* for the several places on the respective Circuits for the Assizes to be hereafter holden *shall, so far as may be practicable and the business to be done may allow, be fixed by the Judges at their meeting* in manner heretofore accustomed *in accordance with the scheme set out in the schedule hereto.*

(ii.) The county of Surrey shall be included in the South-Eastern Circuit.

(iii.) This Order shall come into operation on the first day of October, one thousand eight hundred and ninety-three, and as from that day there shall be repealed so much of the Order in Council of the twenty-sixth day of June, one thousand eight hundred and eighty-four, as is inconsistent with any provision contained in this Order.

(iv.) Except where the context otherwise requires, expressions used in this Order shall have the same meaning as in the Judicature Acts, 1873 and 1875, and the Acts amending the same.

(v.) This Order may be amended, added to, or repealed by Order in Council. C. L. PEEL.

Amendments of above Order.—The above order has been amended by subsequent orders in council, namely, by Order in Council as to Autumn Circuit, 28 May, 1894; Order in Council, 3 August, 1897; Order in Council, 19 May, 1898; Order in Council, 19 May, 1899.

SCHEDULE.

Note.—The Schedule to the Order in Council of the 28 July, 1893, as altered by subsequent Orders in Council, is now omitted as it only *approximately* fixes the days on which the respective circuits commence. Circuit Lists may be obtained from the Printers by Appointment to the Royal Courts of Justice, London, Room No. 1.

ORDERS IN COUNCIL.

APPOINTING DISTRICT REGISTRARS.

(See J. A. 1873, s. 60, Part V., *ante*.)

[The Orders in Council relating to the appointment of District Registrars are now omitted. They are referred to on p. 443, where the list of District Registries which has resulted from these Orders is given.]

CHANCELLOR'S COURT, UNIVERSITY OF OXFORD.

ORDER IN COUNCIL.

August 23, 1894.

In pursuance of "The Supreme Court of Judicature Act, 1875," and "The Statute Law Revision and Civil Procedure Act, 1883," Her Majesty is pleased, &c., to order, as it is hereby ordered, that,—

1. The enactments and the Rules of the Supreme Court relating to Appeals from County Courts shall apply to the Chancellor's Court, commonly called the Vice-Chancellor's Court in the University of Oxford.

2. This Order shall apply as from the fifteenth day of October, one thousand eight hundred and ninety-four.

C. L. PEEL.

ORDER UNDER LOCAL GOVERNMENT ACT, 1888.

The *London Gazette* of Tuesday, March 19, 1895, contains an Order in Council dated the 8th of March, 1895, made under the powers of the Local Government Act, 1888, which alters the instructions, precepts, notices, and forms under the Registration of Electors Acts, and provides various new forms.

The Order may be cited as "The Registration Order, 1895."

RESOLUTIONS OF THE JUDGES.

The following resolutions were passed by the judges of the Queen's Bench Division on May 24, 1894 :—

1. That it is of the utmost importance, for the purpose of avoiding unnecessary delay and expense in the administration of justice, that there should be at least three Courts of Nisi Prius sitting continuously throughout the legal year—one for special jury causes, one for common jury causes, and one for causes without juries—and that all other judicial business should be considered as secondary to this.

2. That next in importance to the sittings at Nisi Prius, it is desirable that there should be at least one Court in Banc sitting continuously throughout the legal year; but that, if it should become absolutely necessary either that the sittings of one of the three Courts in Nisi Prius or of the Court in Banc should be suspended for a few days, it is better that the three Courts at Nisi Prius should continue to sit, and the sittings of the Court in Banc be suspended.

3. That when more than five judges are available, there shall be four, five, or more Courts of Nisi Prius, or two or more Courts in Banc, as the business to be disposed of may require.

4. That when only one Court in Banc is sitting, such Court shall sit for the first three days of the week on the Crown side and for the last three days on the civil side; that when two such Courts are sitting, one shall sit on the Crown side and the other on the civil side; and that when a third Court is sitting, it shall sit for a week at a time on the Crown or civil side, as the state of the business on either side may require.

5. That no Court shall sit on Saturdays for the trial of jury causes, unless to finish a part heard cause, when the judge thinks it advisable so to do; but that as far as possible the Short Cause List, the Cause List under Order XIV., causes on further consideration, cases for the Court for the Consideration of Crown Cases Reserved, and Registration and Bankruptcy appeals shall be taken on Saturdays.

6. That the Court for the Consideration of Crown Cases Reserved shall be formed of the Lord Chief Justice and four other judges to be taken from the judges assigned to sit in Banc or to try jury causes.

7. That the Court for the hearing of Registration appeals shall be formed of the Lord Chief Justice and two other judges to be taken in the same way.

8. That causes in the list for trial, if postponed, shall not keep their places in the list unless the judge shall on special grounds so order, but shall go to the bottom of some week's list.

9. That any cause in any list for trial may be marked urgent or fixed for a day certain on special grounds.

10. That no cause in the week's list shall be ordered to be removed from it by stay or postponement, or have its position in the list altered, except on special grounds, and that any such cause, if postponed, shall be put off to some date beyond the week's list, except on special grounds.

11. That no cause shall be ordered to be interpolated in the week's list, after that list has been made up and transmitted to the printer, except on special grounds.

12. That no cause which is marked as not to be taken before a certain day later than the first working day of a week's list shall be ordered to appear in that week's list except on special grounds.

13. That any application to postpone or mark urgent a cause not in the week's list shall be made to the judge in chambers; and that any application to postpone or mark urgent a cause in the week's list, or to fix a day certain for the trial of any cause, shall be made to the senior judge who is sitting at Nisi Prius for the trial of the

list in which such cause may stand; but applications which will affect the next day's list shall be made before noon on the preceding day, where practicable.

14. That it is desirable that a list should be made of commercial causes to be tried at the Royal Courts of Justice by a judge alone or by jurors summoned from the City, and that a Commercial Court should be constituted of judges to be named by the judges of the Queen's Bench Division.

See the notice as to Commercial Causes, *post*.

15. That any cause may be entered in the Short Cause List, and tried by a judge without a jury, when the parties agree, and counsel on each side certify that the trial will not, in their judgment, occupy more than an hour.

16. That when a cause is settled a fee of 3*s*. 4*d*. shall be allowed on taxation for notifying such settlement to the officer in charge of the list, provided such notification is given before the cause has appeared in the week's list.

17. That a sessional list in the form in the appendix shall be published by the officer in charge of the lists at least seven days before the commencement of each sittings.

18. That the arrangements made in the weekly list shall not be altered, except when the change is unavoidable; and that two days' notice of such alteration shall be given in the daily Cause List, where practicable.

19. That any change of arrangements which may be found to be necessary shall be made as at present, and with the sanction of the Lord Chief Justice or the senior judge in town for the time being.

20. That the Cause Lists for each day shall be made up before the midday adjournment of the previous day, and shall be published at 2 o'clock P.M.

21. That the foregoing resolutions shall be published forthwith, and shall come into operation on June 15 next.

See OFFICIAL REGULATIONS, p. 634, *infra*.

OFFICIAL REGULATIONS FOR THE ISSUE OF WEEKLY LISTS AT NISI PRIUS.

(These regulations are still in force except so far as they are superseded by the Judges' Resolutions, *ante*. Wherever the two are in conflict the Judges' Resolutions, p. 631, prevail.)

The following regulations for the arrangement of the business at Nisi Prius are issued with the sanction and approval of the Lord Chief Justice of England :—

1. Separate printed lists will for the future be made of special and of common jury actions.

2. The whole of the actions standing for trial will not as hitherto be put into any printed list, but as many only will be printed at a time as are considered sufficient to occupy the courts for about three weeks onwards. The list will be reprinted every Friday evening, and republished as soon as possible with all necessary alterations.

3. Notice will be given upon each list as to all the different classes of actions, that no more than a certain specified number of each class will be taken within the week to which the list applies. The actions which may thus be taken within the week will constitute what will be denominated "The week's list."

4. The actions constituting the week's list will be printed at the heads of the classes to which they respectively belong.

5. No case in the week's list is to be removed from it by stay or postponement, or have its position in the list altered, except by leave of a judge on special grounds.

[*N.B. The term "a judge" is not intended to include a master in Chambers. A case may at any time be made a remanet by consent on payment of 3s. fee.*]

6. No action is to be interpolated in the week's list after that list has been made up and transmitted to the printer, except by special order of a judge.

7. No action which is marked as not to be taken before a certain day later than the first working day of a week's list is to appear in that week's list except by special leave of a judge. When a stay is taken off, the action is not to appear in the next week's list, but in the next but one.

8. Actions postponed beyond a week's list are to take their places in all subsequent lists, below those which have stood for trial for the week in question.

9. Actions appearing in a week's list must, if postponed, be put off to some date beyond the week unless by special leave of a judge, and are to be treated with reference to their subsequent position in the general list as if they had not appeared in a week's list.

10. Two days' notice to the opposite party must be given of the intention to remove a stay other than a stay for commission, and if the stay is not removed pursuant to such notice, a fresh notice must be given. A stay for commission may be removed on the application of either party on seven days' notice, and on production to the Associate of a certificate that the evidence has been returned and printed.

11. The number under which each action is originally entered for trial will always remain unaltered.

12. The general nature of each action will be stated in the margin of the list, as, for example, "Slander," "Bill of Exchange," &c. In case the pleadings should not exactly represent, as may happen, the true nature of the action, some short indication of the real question which is for trial is to be given upon the outside of the statement of claim by the solicitor who enters the action for trial.

13. Notice will be given upon every list as to how many courts will sit for the trial of each of the classes of actions which are to be taken during the week.

14. As to actions to be tried without a jury whenever the solicitors to the parties agree and counsel for the plaintiff certifies that in his opinion the trial will not exceed about half an hour, the cause will be put into a list of short cases and taken on some particular day to be fixed for the purpose.

15. [This regulation numbered 15 has been annulled by direction of the Lord Chief Justice, dated 1 April, 1890. See 34 Sol. Jo. 361.]

16. A printed list will be published at least seven days before the commencement of each sittings containing the first week's list, and stating what courts will sit for the week in question, and what actions will be in the first day's paper.

COMMERCIAL CAUSES.

NOTICE.

See "Further Order," p. 636, *infra*.

[This notice is not made under the authority of the Rule Committee but is a practice agreed upon by the judges of the Q. B. D. who have the right to deal by convention amongst themselves with the mode of disposing of the business of their Courts. See judgment of Esher, M.R. *Barry* v. *Peruvian Corp.*, (1896) 1 Q. B. p. 209].

The judges of the Queen's Bench Division desire to make, in accordance with the existing rules and orders, further provision for the despatch of commercial business as herein provided:—

1. Commercial causes include causes arising out of the ordinary transactions of merchants and traders; amongst others, those relating to the construction of mercantile documents, export or import of merchandise, affreightment, insurance, banking, and mercantile agency and mercantile usages.

Commercial Cause.—An action by a merchant against a customer to recover the amount of a bill of exchange given for goods sold and delivered is not a commercial case; see a letter, 39 Sol. Jo. p. 720, and a paragraph, *ibid.*, 715.

2. A separate list for summonses in commercial causes will be kept at chambers. A separate list will also be kept for the entry of such causes for trial, but no cause shall be entered in such list which has not been dealt with by a judge charged with commercial business, upon application by either party for that purpose, or upon summons for directions or otherwise.

"Application by either party."—The plaintiff may apply to enter the cause in the list by summons before the defendant has appeared, and if the Court makes the order the only point the defendant can take when he appears, is that the case is not a commercial one. On an application for liberty to enter the judge has power to make the costs thereof costs in the cause, *Barry* v. *Peruvian Corp.*, (1896) 1 Q. B. 208, C.A.

Commercial causes may be transferred from the C. D. to the Q. B. D. in accordance with the existing practice. See *Baerlein* v. *Chartered Bank*, cited *infra*.

As to Manchester and Liverpool Assizes, see Special Notice, *infra*, p. 637.

3. With respect to town commercial causes it is considered desirable, with a view to despatch and the saving of expense, that all applications shall be made direct to the judge charged with commercial business, and with respect to country commercial causes applications may by consent of the parties be made to him in like manner.

4. As to commercial causes already entered for trial, application may be made to such judge by either party to enter the same in the commercial cause list.

Trial.—See as to giving notice to the clerk to the judge of readiness to try, Order, June, 1896, *infra*.

5. Applications in commercial causes under Order XIV. shall be made as heretofore, but where leave to defend has been given such causes may be dealt with like other commercial causes.

6. Application may be made to such judge under the provisions of the Judicature Act, 1894, and the rules thereunder, or by consent, to dispense with the technical rules of evidence, for the avoidance of expense and delay which might arise from commissions to take evidence and otherwise.

See J. A. 1894, s. 3, *ante*, Part IV., p. 521, and O. 30, r. 7, Vol. I., p. 370.

7. Application may also be made to such judge, after writ or originating summons, for his judgment on any point of law.

8. Such judge may at any time after appearance and without pleadings make such order as he thinks fit for the speedy determination, in accordance with existing rules, of the questions really in controversy between the parties.

9. Parties may, if they so desire, agree that the judgment or decision of such judge in any cause or matter shall be final.

10. Application may be made to such judge in urgent cases to fix an early day for the hearing of any cause or matter.

11. Summonses may be entered in the list of commercial summonses on and after Wednesday, the 20th day of February next; these will be heard by Mr. Justice Mathew, who, on Friday, the 1st day of March next, will sit, and thenceforward will, until further notice, and as far as is practicable, continue to sit *de die in diem* for the despatch of commercial business. Where necessary, other judges of the Queen's Bench Division will assist in the disposal of commercial business.

12. Country commercial causes will be tried as is usual at the assizes.

By Order.

Evidence.—As to evidence in commercial cases see O. 30, r. 7 (n.), Vol. I., p. 370, and *Baerlein* v. *Chartered Bank*, (1895) 2 Ch. 488.

Transfer from C. D.—As to transfer from the Chancery Division to the Commercial Cause list, see *Ibid.*

Application to enter Cause in List.—See (n.) "Application by either party," p. 635, *supra*.

FURTHER ORDER AS TO COMMERCIAL CASES.

Great inconvenience has been caused in the arrangement of the Commercial List of cases, through parties who have had days fixed for trial not apprising the Court of the settlement or withdrawal of such cases. The result has been that other parties who would have been able to try their cases on those days have been unable to secure them, and days are thereby frequently wasted so far as the Commercial List is concerned.

The parties are required, therefore, in cases for which days have already been fixed, to give, where time will admit of it, notice to the clerk to the judge having charge of the Commercial List, seven days before the day fixed for trial that they will be prepared to try on such day, otherwise such cases will be struck out of the list.

Where time will not admit of seven days' notice, the earliest practicable notice must be given.

As to cases in which days for trial shall hereafter be fixed, a like notice must be given (unless otherwise specially ordered), and on failure to give the required notice in any case, such case will be struck out of the list.

25 June, 1896.

Special Notice.

This notice appeared in the W. N., Jan. 18, 1896. Possibly it is intended to apply, mutatis mutandis, to subsequent years.

Manchester and Liverpool Winter Assizes, 1896.—With respect to commercial causes which it is desired to have disposed of at these Assizes, summonses in such causes will, if marked, by consent, "Assize Judge," be heard respectively by the judge taking civil business at Manchester and Liverpool. Up to February 21st, summonses in Liverpool causes will be heard by the assize judge (V. Williams, J.) in chambers in London, and during the Manchester Assizes in Manchester. Up to February 10th, summonses in Manchester causes will be heard by the assize judge (Kennedy, J.) in London, and during the Manchester Assizes in Manchester.

A separate list will be made for commercial causes for Manchester and Liverpool, and days will be fixed for the hearing of the respective causes in such list.

Appointments for summonses, and all information relating thereto can be obtained from the clerks of the respective judges by letter to them or orally.

RULES FOR REGULATING THE PRACTICE AS TO RETAINERS OF COUNSEL.

Prepared by the Bar Committee.

Approved by the Attorney-General, 3rd June, 1892.

Approved by the Council of the Incorporated Law Society, 26th June, 1892.

General Retainers.

I. General retainers are either ordinary or limited.

II. An ordinary general retainer applies to the Supreme Court and House of Lords.

III. A limited general retainer applies to the tribunal or tribunals or Court or Courts to which it is expressed to be limited.

IV. A separate general retainer must be given for the privy council.

V. A separate general retainer must be given for parliamentary committees.

VI. If the counsel who has accepted a general retainer from one party should be offered a special retainer or brief by another party, the general retainer entitles the party who has given it to reasonable notice before the offered special retainer or brief is accepted.

VII. Subject to these rules a general retainer lasts for the joint lives of the client and counsel, unless the same be forfeited.

VIII. In case a special retainer or brief is offered to counsel by a party other than the party from whom he has accepted a general retainer, the counsel, after giving notice to the party from whom he has accepted the general retainer of the offer of the special retainer or brief, is at liberty to accept the special retainer or brief of the other party, unless a special retainer or brief be given within a reasonable time by the party from whom he has accepted the general retainer.

IX. Where a general retainer has been given, and a brief is not delivered to the retained counsel in any action or other proceeding in which the party giving the general retainer is concerned, and to which it applies, or a special retainer or brief is not given within a reasonable time after a notice has been given by the counsel holding a general retainer, that a special retainer or brief has been offered to him by another party, the general retainer is forfeited; provided that the holding of a general retainer does not entitle a Queen's counsel to the delivery of a brief on occasions when it is usual to instruct a junior counsel only.

X. Where a general retainer has been given for one person, and he is party to a proceeding with others and appears separately, the retainer applies to that proceeding; but if he appears jointly with others, the retainer does not apply, and remains unaffected.

Special Retainers.

XI. A special retainer cannot be given until after the commencement of an action, appeal, or other proceeding.

XII. A special retainer in an action or proceeding in the Supreme Court gives the client a right to the services of the counsel while the action or proceeding remains in or under the control of that Court.

XIII. A special retainer in an action or proceeding other than an action or proceeding in the Supreme Court gives the client a right to the services of the counsel during the whole progress of such action or proceeding.

XIV. A counsel who has been specially retained is entitled to the delivery of a brief on every occasion to which the special retainer applies; provided always:

A special retainer does not entitle a Queen's counsel to the delivery of a brief on occasions when it is usual to instruct junior counsel only.

Where more than one junior counsel has been retained, only one of such junior counsel is entitled to the delivery of a brief on occasions when it is usual to instruct one junior counsel alone.

See the resolution of the General Council of the Bar as to the enforcement of this rule, p. 640, *infra*.

Circuit Retainers.

XV. A special retainer must be given for a particular assize.

XVI. If the venue be changed for another place on the same circuit, a fresh retainer is not required.

XVII. If the action be not tried at the assize for which the retainer is given, the retainer must be renewed for every subsequent assize until the action is disposed of, unless a brief has been delivered.

XVIII. A retainer may be given for a future assize, without a retainer for an intervening assize, unless notice of trial shall have been given for such intervening assize.

Appeals.

XIX. When a counsel has held a brief for any party in an action or proceeding, but has not received a general or special retainer, he shall not accept a general retainer or special retainer or a brief on appeal (including in that expression appeals to the house of lords and to the privy council) for any other party, without giving the original client the opportunity of retaining or delivering a brief to him.

Opinions and Pleadings.

XX. Counsel who has drawn pleadings or advised, or accepted a brief, during the progress of an action on behalf of any party shall not accept a retainer or brief from any other party without giving the party for whom he has drawn pleadings or advised, or on whose behalf he has accepted a brief, the opportunity of retaining or delivering a brief to him, but such counsel is entitled to a brief at the trial, and on any interlocutory application where counsel is engaged, unless express notice to the contrary shall have been given to him with the instructions to draw such pleadings or advise, or at the time of the delivery of such brief. Provided always, such counsel shall not be entitled to a brief in any case where he is

unable or unwilling to accept the same without receiving a special fee.

See the resolution of the General Council of the Bar as to enforcement of this rule, *infra*.

XXI. No counsel can be required to accept a retainer or brief or to advise or draw pleadings in any case where he has previously advised another party on or in connection with the case, and he ought not to do so in any case in which he would be embarrassed in the discharge of his duty by reason of confidence reposed in him by the other party, or in which his acceptance of a retainer or brief or instructions to draw pleadings or advise would be inconsistent with the obligation of any retainer held by him, and in any such case it is the duty of the counsel to refuse to accept such retainer or brief, or to advise or to draw pleadings, and in case he has received such retainer or brief inadvertently, to return the same.

Promotion of Counsel.

XXII. The retainer of a counsel does not cease upon his being promoted to a higher rank at the bar.

Amount of Fees.

XXIII. The fees for *general* retainers are as follow :—

In parliament (committees) . .	*Ten Guineas.*
In all other cases	*Five Guineas.*

XXIV. The fees for *special* retainers are as follow :—

In parliament (committees) . .	*Five Guineas.*
In the house of lords and privy council	*Two Guineas.*
In all other cases	*One Guinea.*

THE GENERAL COUNCIL OF THE BAR.

Resolutions of the General Council of the Bar as to Rules 14 & 20 as to Etiquette, &c.

Numerous applications have been made to the General Council of the Bar during the past two years with regard to the meaning and enforcement of Rules 14 and 20 of the rules regulating the practice as to retainers of counsel, prepared by the Bar Committee and approved by the Attorney-General and the Incorporated Law Society in 1892.

The Council, having fully considered the matter, have resolved (1) that the said Rules 14 and 20 be *enforced* by the following :—

Rule of the Profession.—"When a brief is offered or delivered to any counsel, and he finds that another counsel has become entitled to a brief within the meaning of Rule 14 or 20 and has not been briefed, such first-named counsel ought, where practicable, to ascertain from the solicitor offering or delivering such brief whether there is any sufficient explanation why a brief has not been offered or delivered to such other counsel, and unless a satisfactory explanation is given ought to refuse or return the brief."

And (2) that such practice be henceforth considered a *Rule of the profession*. Annual Statement General Council of the Bar, 1897-1898.

The opinion of the Council has been asked (1) as to whether a change of Solicitors constitutes a "sufficient or satisfactory explanation," within the meaning of the established *Rule of the Profession* for the enforcement of the above Retainer Rule 20? and (2) as to whether the said Retainer Rule applies to proceedings after the trial of an Action, *e.g.* on a motion for a New Trial or Appeal from the Judgment at the trial of the Action?

The Council have replied :—

(1) "That in their opinion a change of Solicitors would not *by itself* constitute a sufficient or satisfactory explanation."

(2) "That in their opinion Rule 20 of the Retainer Rules does not apply to any proceedings after the conclusion of the trial of an action."

The *Rule of the Profession* above referred to is as above stated.

ETIQUETTE.

The opinion of the Council has been invited by the Incorporated Law Society with reference to the duty of Counsel to return fees where Counsel has been briefed on the distinct understanding that he will give his personal attention to the case throughout, which he has failed to do.

The Council have replied :—

"That in their opinion where a Barrister accepts a brief upon an express undertaking that he will personally attend throughout the case, he ought, if he does not so attend, to return his fee."

The opinion of the Council has been asked as to whether it is improper for Counsel to accept a brief in London from a country Solicitor who has no London certificate without the intervention of a London Agent.

The Council have replied :—

"That in their opinion there is no obligation either by etiquette or otherwise upon Counsel to refuse a brief under such circumstances."

The opinion of the Council has been asked as to whether the etiquette of the Bar would be opposed to a Barrister practising at the Bar whilst carrying on the occupation of an Analytical and Consulting Chemist and Public Analyst under the Sale of Food and Drugs Act?

The Council have replied :—

"That in their opinion it is not desirable that a person holding the office of Public Analyst under the Sale of Food and Drugs Act should practise at the Bar."

REGULATIONS.

In accordance with the Resolution adopted at the last Annual General Meeting of the Bar, Regulation 28 has been amended as follows :—

28 "Any member of the Bar shall be at liberty to bring forward for discussion at the Annual General Meeting any Resolution, provided that notice thereof shall have been given in writing to the Secretary of the Council not less than seven clear days before the day of Meeting, and that in the opinion of the Executive Committee of the Council such resolution is a matter of general interest to the Bar."

HENRY C. A. BINGLEY,
Secretary.

(1899) W. N., Jan. 21st.

Settlement of Differences between Barristers and Solicitors.

If the parties in dispute sign the following memorandum, the Chairman and President therein mentioned, will undertake the settlement of the matter.

"We, the undersigned, hereby testify our consent to leave the matters in dispute between us, to be settled by the Chairman of the Gen. Co. of the Bar, or some member of that Council to be named by him, and the President of the Incorp. L. Soc., or some member of that Society to be named by him, as they think fit, and to abide by their decision." Annual Statement of General Council of the Bar, 1897-1898.

PART VII.

APPEALS TO THE HOUSE OF LORDS.

SYNOPSIS OF PROCEDURE.

And see the official "Summary of ordinary Procedure in Appeals," *post*, p. 656.

Generally.—See the Appellate Jurisdiction Act, 1876, as amended by App. Jur. Act, 1887, p. 476, *ante*.—As to Lords of Appeal, see App. Jur. Act, 1876, ss. 3, 6. As to courts from which appeal lies, see App. Jur. Act, 1876, s. 3. As to when and in what cases an appeal lies, see App. Jur. Act, 1876, s. 3 (n.), p. 476. As to time for appealing, St. O. 1, p. 657. As to the procedure on appeal, see App. Jur. Act, 1876, s. 11, and the Standing Orders and Directions for Agents hereinafter set out.

Nautical Assessors (Scotland) Act, 1894.—By this Act provision is made for the attendance of assessors at the trial of maritime causes in the Court of Session and Sheriff's Courts in Scotland, *and in appeals to the House of Lords*.

Scotch and Irish Appeals.—See App. Jur. Act, 1876, s. 3, p. 476, s. 12, p. 480, s. 25, p. 484, St. O. 5, 7, 9.

Petition of Appeal.—Every appeal to be by way of petition (App. Jur. Act, 1876, s. 4; St. O. 1, *post*).

The form of a petition is given at p. 647. To be lodged (Dir. for Ag. 3), except in certain cases, within year from decree (St. O. 1, *infra*). To be printed on parchment (Dir. for Ag. 1). To be signed by counsel, and reasonableness certified (St. O. 2). As to certificate of leave in case of Scotch appeal, see St. O. 9. Two clear days' notice of intention to present to be given, and correct copy to be served on respondents (Dir. for Ag. 2). The service is to be certified on the appeal, see the form of certificate, p. 647.

Discretion—Appeals from.—Cf. *Wallingford* v. *Mutual, &c., Society*, 5 App. Cas. 685.

Appeals Formâ Pauperis.—See (n.) "Pauper," p. 644, and "Pauper Costs," p. 645.

Costs.—Appeal as to, see (n.) "Costs," p. 645, *infra*.

Presentation of Appeal.—After service of notice of appeal and certificate thereof, Form, p. 647, the appeal may be lodged (Dir. for Ag. 3).

Security for Costs.—See this (n.) p. 645.

"Order of Service."—On lodgment of appeal, an order to respondents to lodge cases will be issued (Dir. for Ag. 3). This is the "order of service" (St. O. 3), and observe, that the date at the head thereof is the date of the "presentation of the appeal," and that *the periods limited for the various proceedings take effect from that date* (Dir. for Ag. 4).

This order is served on the respondents, and must be returned, with an affidavit of service *thereon*, to the office within six weeks from the date of the presentation of the appeal, *i.e.* from the date at the head of the "order for service." (Dir. for Ag. 3, 4, 21; St. O. 5.)

Appearance of Respondents.—See Dir. for Ag. 17.

Petitions (Incidental).—Incidental applications for time, Dir. for Ag. 18, 21; for leave to sue *in formâ pauperis*, Dir. for Ag. 16, 118; for special leave to appeal where leave has been refused in Court below, *Baudains* v. *Jersey Banking Co.*, 13 App. Cas. 832; for substituted service; revivor (St. O. 8); for leave to withdraw appeal, *Chastey* v. *Ackland*. (1897) A. C. 155, &c., &c., are required to be by petition and engrossed, &c. (Dir. for Ag 18—19). The form of a petition for time is given in App. C., p. 663. Other forms for revivor, &c., can be obtained from department, Dir. for Ag. 19. A draft of the petition should be submitted to the clerks of the Judicial department, Dir. for Ag. 19. These petitions are heard before the appeal committee and supported by affidavit; counsel are not heard. (Dir. for Ag. 18—20.) There must be no concealment of any material facts, see *Baudains* v. *Jersey Banking Co.*, *supra*.

Lodging Cases.—All parties are to lodge several, or joint, cases within six weeks (English), eight weeks (Irish and Scotch), from date of presentation of the appeal; *i.e.* from date at head of "order of service." (Dir. for Ag. 21, 22, 23, 31; St. Orders, 5, 7.) As to respondents' cases, Dir. for Ag. 30, 31.

The cases must be signed by counsel. (Dir for Ag. 26; St. O. 5 (3).)

For the forms and mode of printing, &c., see Dir. for Ag. 27 and (n.).

Forty copies of each *case and appendix* must be lodged in the office, including ten bound copies. (Dir. for Ag. 29; St. O. 5; App. B., *infra*; petition for further time to lodge cases, App. "C," *infra*.)

Special Case Appeal Form.—See Dir. for Ag. 22, *infra*, p. 651.

Time, extension of.—St. O. 7; Dir. for Ag. 21.

Cross Appeals.—Must be presented within time fixed for lodging cases, St. O. 6. As to security for costs upon, see *Russell* v. *R.*, cited (n.) "Security for Costs," p. 645.

Appendix.—Appendices are to be lodged with the cases. (Dir. for Ag. 21, 23—24, 28.)

The applicant should prepare and furnish the respondents with proof appendix as soon as possible after presentation. (Dir. for Ag. 24.) Costs of, 25.

Additional Documents.—The respondents may print any additional document in the appendix which is for the use of both parties. (Dir. for Ag. 24; as to costs, 25.)

Exchange of Cases.—After lodgment the cases are exchanged. (Dir, for Ag. 32.)

Setting down for Hearing.—Either party may set down the case as soon as the cases and appendix are lodged, but the *appellant must* do so for hearing on the first sitting day after the expiration of the six or eight weeks from date at head of "order of service," or the appeal will stand dismissed. (Dir. for Ag. 33; St. O. 5 (1).)

If the respondent is in default as to lodgment of case, the cause may be set down "*ex parte*." (Dir. for Ag. 30.)

Scotch and Irish Appeals.—St. O. 5, and (n.) "Effective Cause List," *infra*.

Time.—Computation of, Dir. for Ag. 4. Extension of, Dir. for Ag. 18, 19, 21.

Abatement by Death, and Revivor.—See Dir. for Ag. 19, 39, and St O. VIII.

Withdrawal of Appeal.—See (n.) "Petitions (Incidental)," p. 643, *supra*.

Effective Cause List.—When the cause is set down it will take its position in this list. (Dir. for Ag. 33.)

Causes postponed on account of compromise go to bottom of list, see Dir. for Ag. 34.

In Scotch and Irish cases one appeal only will be put in the paper for hearing, 32 Sol. Jo. 65.

Hearing.—See Dir. for Ag. 35—38. Not less than three Lords of Appeal to be present at hearing. (App. Jur. Act, 1876, s. 5.)

Irish and Scotch Appeals.—See App. Jur. Act, 1876, s. 12; Dir. for Ag. 36, 37; St. O. 5. As to certificate of leave in case of Scotch appeals, see St. O. 9.

Admiralty Actions, assessors at hearing.—Dir. for Ag. 38. Assessors, see J. A., 1891, s. 3.

Evidence—New Facts.—The Court will proceed on the facts proved at the trial, and will not allow new questions of fact to be raised. (*Hurley* v. *W. London Ry. Co.*, 14 App. Cas. 39, but see *Edinburgh United Breweries* v. *Molleson*, (1894) A. C. p. 104.) When a question of *law* is raised for the first time in a Court of last resort, upon the construction of a document, or upon *facts either admitted or proved*, it is not only competent but expedient in the interests of justice to entertain the plea. See the judgment of the Judicial Committee in *The Connecticut Fire Insurance Co.* v. *Kavanagh*, (1892) A. C. 480, and see *Misa* v. *Currie*, 1 App. Cas. p. 559 (1876).

Concurrent findings of Facts.—Where there have been concurrent findings of fact by the courts below, the question on appeal is not what conclusion their lordships might have arrived at if the matter had for the first time come before them, but whether it has been established that the judgments of the courts below were clearly wrong (*Allen* v. *Quebec, &c., Co.*, 12 App. Cas. 101, P. C.; the *P. Caland*, (1893) A. C. 207); and appellant must show that such findings were wrong. *McIntyre* v. *McGavin*, (1893) A. C. p. 272.

Evidence, printing of.—See (n.) "Printing Evidence," p. 652.

Original Documents at Hearing.—Agents must have original documents in readiness. (Dir. for Ag. 35.)

Paupers.—Petitions to be allowed to sue *in formâ pauperis* must be lodged within one week from the date of order of service (Dir. for Ag. 16, 19; and see Appeal (Formâ Pauperis) Act, 1893, Part IV., *ante*, p. 525). If the object of the suit is to establish a public right, leave will not be given. (*Faulds* v. *Vere*, W. N. (88) 162; *Bowie* v. *Marquis of Ailsa*, 13 App. Cas. 371.) Unless leave to appeal in *formâ pauperis* is given by the House. Standing Order IV., *infra*, p. 658, will apply. In a case of *Lee* v. *Williams*, Lords Journal, June, 1886, a person who had been admitted to sue as a pauper in the Chancery of Lancaster appealed to the C. A. to vary the judgment. That court reversed the judgment of the Palatine Court, which was in his favour, and allowed a cross appeal. He then presented a petition of appeal to the House of Lords; and *then* an incidental petition for leave to sue as a pauper, see "Directions for Agents," 18 and 19, *infra*, but he was dispaupered and ordered to give security for costs. See (n.) "Pauper Costs" p. 645.

Abatement on Death.—See Dir. for Ag. 39; St. O. 8.

Bankruptcy.—Defect through, Dir. for Ag. 39; St. O. 8.

Consolidation of Appeals.—Their lordships will consolidate appeals at any stage if it appears convenient that they should be heard together. An appeal was struck out of the board and ordered to be consolidated with two other appeals arising out of the same will, but in a suit which

had not been instituted till a year after the first appeal had been admitted (*Hiddingh* v. *Denyssen*, 12 App. Cas. 107).

Dismissal for Want of Prosecution.—See Dir. for Ag. 43, and *Milson* v. *Carter*, (1893) A. C. 638.

Cross Appeals.—St. O. 6.

Judgment.—The Supreme Court cannot correct a slip in an order of H. of L., it can only construe it (*Dreyfus* v. *Peruvian Guano Co.*, 32 Sol. Jo. 184). If the order reverses or varies the order appealed from it should be made an order of that court. As to making judgment of H. of L. judgment of H. C., see Seton. p. 746; *British Dynamite, &c.* v. *Krebs*, 11 C. D. 448; *Van Grutten* v. *Foxwell*, 41 Sol. Jo. 715, Vol. I., O. 52, r. 3, p. 709.

Rectification of Slip, or error in order.—The House has power to correct an error in a decree or order arising from a slip or accidental omission, whether there is or is not a general order to that effect. *Hatton* v. *Harris*, (1892) A. C. 547; *Milson* v. *Carter*, (1893) A. C. 638.

Review of Decision of House of Lords.—A decision of the House upon *a point of law* is conclusive upon the House, and if erroneous, can be set right by Act of Parliament only. *London Street Tramways Co.* v. *London Cty. Co.*, (1898) A. C. 375.

Stay of Execution.—Application should be in first instance to Court of Appeal, see *The Khedive*, 5 P. D. 1; *Grant* v. *Banque, &c.*, 3 C. P. D. 202; D. C. P. 1281; *Hamill* v. *Lilley*, 19 Q. B. D. 83; Seton, p. 745; and cases cited in note to O. 58, r. 16, Vol. I.

Fees.—See the schedule of fees to be charged, Appendix, *infra*, p. 664.

Costs.—The House of Lords has jurisdiction over the costs of all appeal to that House, *Manchester, &c., R. Co.* v. *Doncaster, &c.*, (1897) 1 Q. B. 117; St. O. 10, and see, as to forms of Bills, Dir. for Ag. 40 and Appendix E., p. 664. An appeal must not be brought for costs, or in relation to costs. But where an order imposes, as a condition to having a new trial, the payment within a certain time of the costs of the first trial, such order is appealable (*Metropolitan Asylum* v. *Hill*, 5 App. Cas. 582). As to costs of revived action, *Boynton* v. *B.*, 4 App. Cas. 736. As to costs reserved for decision of C. A., when judgment of C. A. is reversed, *Garnett* v. *Bradley*, 3 App. Cas. 944.

Costs of Court Below.—The House has power to *give* costs in the court below and the costs of the appeal, see *Guardians, &c., West Ham* v. *Churchwardens, &c.*, (1895) 1 Q. B. 662, considered in *Manchester, &c., Ry. Co.* v. *Doncaster Guardians*, (1897) 1 Q. B. 117.

Against Crown.—In *Eastman Photographic, &c., Co.* v. *Comptroller-General, supra*, the Court, reversing the C.A., decided in favour of the Co., but held it could not *give* costs against the Crown, or the costs in the first Court, which were part of getting registration. It expressed an opinion that the costs ordered by the C.A. to be paid by the appellant should be returned.

Security for Costs.—See Dir. for Ag. 5—15, 40, 41; St. O. 4, 7. Repayment of, Dir. for Ag. 41—42. If conditions of orders not complied with, appeal to stand dismissed. (St. O. 4.)

Where there is an appeal and then a cross appeal, and the appeal is withdrawn or dismissed for want of prosecution and the appellant in the cross appeal desires to continue it, security for costs may be required. *Russell* v. *R.*, (1897) A. C. p. 400.

Taxation.—As to taxation, St. O. 10, p. 660. Dir. for Ag. 40; Appendix E.

Of Printing Appendix.—As to costs of printing Appendix, Dir. for Ag. 25.

Pauper Costs.—The orders of the Supreme Court do not apply to the House of Lords, and there is no rule or practice of the House as to

assigning a solicitor to a pauper appellant. As between such a person and his solicitor the contract must be taken to be the ordinary one, so that the pauper is liable to pay the solicitor in the usual way, *Re Raphael*, *infra*.

In the successful appeal of *Johnson* v. *Lindsay*, (1892) A. C. 110, the pauper appellant's costs were taxed on the "*dives*" scale at £260. On review of the taxation, the costs were taxed at £50. The fees of the House and counsel's fees were disallowed. The solicitor was allowed costs out of pocket, and a reasonable sum to cover office expenses, clerks, &c., see Par. in 92 L. T. Jo. 402, from information furnished by the solicitors for respondents; and see the petition of appeal and order thereon, 93 L. T. Jo. 38.

See Formâ Pauperis Act, Part V., p. 525, and the new scale of pauper costs in House of Lords, p. 665, and the following cases: *Nieroth* v. *Boileau*, 2 Times Rep. 478; *Blair* v. *The North British, &c.*, 15 App. Cas. 495; *Richardson* v. *R.*, (1895) P. 346; *White* v. *W.*, (1898) P. 124; *Re Raphael*, (1899) 1 Ch. 853.

Printed Forms of Bill of.—See Appendix "E," and note, p. 664.

Recovering Costs of Appeal in House of Lords.—The difficulties which a respondent has to encounter when he wishes to enforce payment of the costs of an appeal which has resulted in his favour are well shown in *Brocklesly* v. *Temperance B. S.*, (1895) A. C. 173, and the cases on this subject are commented upon in an excellent article in 39 Sol. Jo. p. 498, which sums up the general result thus:—

1. An order of the House of Lords affirming a judgment of the court below may be made an order of the court below if the House of Lords is in recess, and may be enforced by the court below as to costs.

2. If the House of Lords is sitting, it may remit such a judgment to the court below, to be there enforced as to costs.

3. If the order of the House of Lords varies or reverses the judgment of the court below, it may as of course on *ex parte* motion be made an order of the court appealed from, and will thereupon be enforced as to costs and otherwise in the ordinary way, cf. *Eastman Photographic, &c. Co.* v. *Comptroller-General*, (1898) A. C. p. 585, and *supra*, p. 645.

4. There is no precedent or decision which stands in the way of the court appealed from adopting and enforcing every order of the House of Lords, whether the House is sitting or not, and whether the order affirms or varies or reverses the judgment of the court. The case of *Attorney-General* v. *Scott* (1 Ves. sen. 412) is no authority against the discretion of the court below to adopt an order of the House of Lords for the sole purpose of enforcing payment of costs.

Set off of Costs.—After final judgment has been given the appeal committee will not set off costs (O. 65, r. 14) due by an apellant in the House of Lords against balance costs due to appellant as result of decision in C. A. *Russell* v. *R.*, (1898) A. C. 307.

Application as to Costs, &c., when to be dealt with.—If it is desired to have the decision of the House upon any question of costs, or if it is desired that the question should be reserved it should be mentioned at the hearing.

It is too late to apply to the appeal committee after judgment given.

This applies *to any matter incident to an appeal*, besides questions of cost. *Russell* v. *R.*, *supra*.

Note.—If any difficulty arises as to the practice, the clerks at the office of the House of Lords may be applied to: Chitty, Arch. p. 995.

(APPELLATE JURISDICTION ACT, 1876.)

FORM OF APPEAL, METHOD OF PROCEDURE, AND STANDING ORDERS

APPLICABLE TO ALL APPEALS PRESENTED TO THE HOUSE OF LORDS ON AND AFTER THE 1ST DAY OF NOVEMBER, 1876.

Form of Appeal (Standing Order No. I.).

To the Right Honourable the House of Lords.

The humble petition and appeal of A. (*set forth the address of the Appellant*).

Your petitioner humbly prays that the matter of the order (*or* orders, *or* judgment, *or* interlocutor) set forth in the schedule hereto* (*or*, so far as therein stated to be appealed against) may be reviewed before Her Majesty the Queen in Her Court of Parliament, and that the said order (*or*, so far as aforesaid) may be reversed, varied, or altered, or that the petitioner may have such other relief (*if specific relief be desired, it can be so stated in the prayer*) in the premises as to Her Majesty the Queen, in Her Court of Parliament, may seem meet; and that (*here name the respondents*) mentioned in the schedule to the appeal may be ordered to lodge such printed case† as they may be advised, and the circumstances of the cause may require, in answer to this appeal; and that service of such order on the solicitors in the cause of the said respondents may be deemed good service.

(*To be signed by two counsel.*)‡

(*Here insert Schedule.*)

* NOTE.—The Schedule must set out the title of, and parties to the cause or matter; and the decrees, orders, judgments, or interlocutors appealed against, and where the appeal is not against the whole decree the part appealed against must be defined.

Standing Order No. II. (Signature of Counsel).

FORM OF SCHEDULE.

"From Her Majesty's Court of Appeal (*England*).

"In a certain cause (*or* matter) wherein A. was plaintiff and B. was defendant. (*The names of all parties to the appeal, whether original plaintiffs or defendants in the cause, or added by subsequent orders, must be here set forth.*)

"The order of (*state court and date of order*) appealed from is in the words following, viz. (*set forth, in italics throughout, the whole of the order appealed from* §).

Form when the order is appealed from *in toto*.

"The order of (*state court and date of order*) referred to in the above prayer is in the words following, the portion complained of being printed in italics (*set forth order, the portion complained of being printed in italics, the portion not complained of being printed in roman type*)." §

Form when the order is appealed from in part only.

We humbly conceive this to be a proper case to be heard before your lordships by way of appeal.

(*To be signed by two counsel.*)‡

Standing Order No. II. (Certificate of Counsel).

I, , clerk to Messrs. , of , solicitors for the appellants within named, hereby certify that on the day of I served Messrs. , of , solicitors for , the within-named respondents, with a correct copy of the aforegoing appeal, and with a notice that on the day of or as soon after as conveniently may be, the petition of appeal would be presented to the House of Lords on behalf of the appellant.

Certificate of Notice to Respondents to be written on the last page of the *parchment* appeal.

† *See* Directions for Agents, paragraph 31, as to lodgment of respondent's case *or separate cases*.

‡ In the event of the autograph signatures not being subscribed to the *parchment* appeal, the draft containing them must be shown to the clerks of the Judicial Department at the time of lodging the appeal.

§ Where several orders are appealed from, *each* order must be headed with a statement of the court and the date of the order.

Directions for Agents.

DIRECTIONS FOR AGENTS.

N.B.—*All documents must be lodged in the Parliament office before three o'clock on the day of presentation.*

METHOD OF PROCEDURE.

Presentation of the appeal.

1. The appeal must be printed on parchment (*quarto size*).

2. Two clear days' notice of the intention to present the appeal, together with a correct copy of the appeal,* must be served on the respondents or their solicitors prior to presentation, and a certificate of such service entered on the appeal as above.

Notice of intention to present.—See the Certificate, *supra*, p. 647.

3. The appeal, together with four printed paper copies, may then be lodged in the Parliament office,† and if the House be then sitting, or if not, on the next ensuing meeting of the House, the appeal will be presented to the House, and an order made requiring the respondents to lodge a printed case in answer to the appeal. This order will be issued‡ to the appellants' agent for service on the respondents or their solicitors, and the same, together with an affidavit § of due service entered *thereon*, must be returned to the Parliament office *within* the period granted to the appellant for lodging his printed cases under Standing Order No. V.

Order of Service—*see* Standing Order No. III.

"**Respondent.**"—Cf. 30, 31.

"**Printed Cases.**"—See 21, 26, *infra*, and note; and St. O. 5, and 7.

"**Must be returned.**"—Cf. St. O. 3.

"**Within the period.**"—As to extension of 18, 21, *infra*, St. O. 7.

4. The several periods limited by the Standing Orders take effect from the date of the *presentation* of the appeal to the House *which is the date at the head of the Order of Service.*

"**Order of Service.**"—See 3, *supra*, and St. O. 3 and 5 (n.).

Security for Costs—*see* Standing Order No. IV. and also Standing Order No. VII., with regard to expiry of time during recess.

5. Security for costs is given by recognizance to the amount of 500*l.*, and a bond for 200*l.* In lieu of the bond, payment must be made of 200*l.* into the Security Fund Account of the House of Lords *within* one week after the *presentation* of the appeal to the House. (All drafts and cheques to be made payable to "House of Lords Security Fund Account," and to be crossed "Bank of England, Western Branch.")

Security for Costs.—See 6—15, *infra*, and this (n.), *supra*, p. 645, and St. O. 4. As to payment out, 40, 41, *infra*.

"**Within one week.**"—See 4, *supra*, St. O. 4 and 7.

* It will be found convenient that the appellant's agent should supply the other side with at least five additional printed copies of the appeal.

† See also paragraph 9.

‡ In Scotch appeals, when the "Order of Service" is desired on the day of presentation for the purpose of staying execution below, the appeal must be lodged in the Parliament office not later than *one o'clock* on the day of presentation, accompanied by a letter from the agent stating that the "Order" is required for the purpose of staying execution.

§ Affidavit to be sworn before a commissioner duly appointed to administer oaths in England or Ireland or a justice of the peace in Scotland.

Directions for Agents.

Recognizance

6. The *recognizance* must be entered into by each appellant, where there are more than one. (It is usual to issue the recognizance for execution by the appellant at the time of the issue of the bond.) In the event of a *substitute* being proposed, the name of such substitute, together with a certificate of sufficiency by the solicitor or agent of the appellants, must be lodged in the Parliament office within one week after the *presentation* of the appeal to the House; two clear days' notice of the name so proposed, together with a copy of the certificate, having been previously given to the solicitor or agent of the respondents. For form of certificate *see* Appendix A.*

"**Presentation.**"—See 4, *supra*.

Bond.

7. The *bond* must be entered into by two sufficient sureties to the satisfaction of the clerk of the Parliaments. The names of the proposed sureties, together with a certificate of sufficiency by the solicitor or agent of the appellants, must be lodged in the Parliament office within one week after the *presentation* of the appeal to the House; two clear days' notice of the names so proposed, together with a copy of the certificate, having been previously given to the solicitor or agent of the respondents. For form of certificate, *see* Appendix A.*

"**Presentation.**"—See 4, *supra*.

Information as to sufficiency of sureties, &c., to be given to respondent's agent.

8. It is the duty of the solicitor or agent of the appellants, on giving the respondent's solicitor or agent notice of the names proposed as sureties or substitute, to furnish him with such information as will enable him to ascertain the sufficiency of the proposed sureties or substitute.

9. Whenever possible, it will be found convenient to lodge the above certificates, &c., relating to the recognizance and bond at the time of lodging the appeal. When this cannot be done, the appellant's agent should be prepared to state whether the recognizance is to be entered into by the appellant in person or by substitute, and whether a bond will be executed or the 200*l.* deposited.

Execution of recognizance and bond.

10. At the termination of one week from the lodgment of the above certificates, the *bond* and *recognizance* are issued to the solicitor or agent of the appellants for execution before a commissioner appointed to administer oaths in the Supreme Court of Judicature in England or in Ireland, or before a justice of the peace in Scotland.

Return of recognizance and bond.

11. The bond and the recognizance (whether entered into by the appellants or by a substitute) *must* be returned to the Parliament office within one week from the date of the issue thereof to the solicitor or agent of the appellants.

Objection to sureties or substitute.

12. If objection be taken by the respondent to the sureties or substitute proposed by the appellant, the respondent's agent must address a letter to the clerk of the Parliaments setting forth the nature of the objection. This letter must be lodged in the Parliament office within one week from the lodgment of the certificates of sufficiency in the Parliament office.

Justification of sureties' substitute.

13. In the event of the clerk of the Parliaments requiring a justification of the sureties, the appellant's agent must within one week from the date of an official notice to him to that effect, lodge in the Parliament office an affidavit or affidavits by the proposed sureties setting forth specifically the nature of the property in consideration of which they claim to be accepted as sureties in respect of the bond, and also declaring that the property in question is unincumbered, and that after payment of all just debts and liabilities they are each well and truly worth the sum of 200*l.* A copy of the affidavit or affidavits must be served on the agent of the respondents before lodging the same in the Parliament office. If the respondents desire to file counter affidavits, the same should be lodged with as little delay as possible, copies having been served on the agent of the appellants.

* Forms to be filled up can be obtained on application to the Judicial Department.

Directions for Agents.

14. If on perusing and considering these affidavits the clerk of the Parliaments deems the proposed sureties not satisfactory, the appellant is required to pay into the Security Fund Account of the House the sum of 200*l.* as security for the costs of the appeal within four weeks from the date of an official notice by the clerk of the Parliaments intimating his dissatisfaction with the proposed sureties. In default of such payment within the period aforesaid the appeal will stand dismissed.

As to payment out, see 41, 42, *infra*.

15. The like practice is to be observed with regard to the substitute for the recognizance, with this exception, that in the event of the substitute being deemed by the clerk of the Parliaments not satisfactory, the appellant or appellants are required to enter personally into the usual recognizance.

Pauper appeals.

16. Petitions for leave to sue *in formâ pauperis* must be lodged for presentation within one week from the date of the presentation of the Petition of Appeal to the House; in default, the Appeal will stand dismissed under Standing Order No. IV. (Forms of Pauper Petitions, and of Affidavits and Certificates of poverty can be obtained from the Judicial Department.)

In pursuance of the "Appeals (Formâ Pauperis) Act, 1893," appellants praying for leave to sue *in formâ pauperis* are required to establish to the satisfaction of the Appeal Committee a *primâ facie* case for the Appeal; they are also required to lodge in the Judicial Department, as soon as possible after the presentation of the Petition, a copy of the proceedings in the courts below, together with references to the reports, if any, of the cause in the courts below.

See (n.) "Paupers," p. 644, and Dir. for Ag. 19.

Appearance on behalf of respondents.

17. The solicitors of those respondents who purpose lodging printed cases in answer to the appeal should attend at the Parliament office for the purpose of ascertaining the due execution of the recognizance and bond, and entering their names in the appearance book. (Only solicitors who have thus entered appearance in the cause are entitled to notice of the meeting of the Appeal Committee.)

Incidental petitions.

Duplicate required where assent is not given.

18. Petitions presented in *incidental* applications are required to be engrossed on *foolscap, bookwise;* with regard to petitions in which an assent cannot be obtained, two clear days' previous notice of the intention to present, together with a copy of the petition, must be served on the opposing agent, and a *duplicate* of the petition must be lodged in the Parliament office, together with the original petition. The form of a petition for extension of time to lodge the appellant's cases is given in Appendix C.

19. Forms of petitions (subject to modification, if required) for the restoration of an appeal, for leave to sue *in formâ pauperis*, for revivor, and for withdrawal of an appeal, can be obtained from the Judicial Department. It will be found advisable in exceptional cases to submit a draft of the petition to the officers of the Judicial Department.

Paupers.—See Appeals (Formâ Pauperis) Act, 1893, Part IV., *ante*, p. 525, (n.) "Pauper Costs," *supra*, p. 645. Petition for further time, App. C., p. 663, *infra*.

Revivor.—See Dir. for Ag. 39, *infra*, and St. O. 8.

Adding Parties.—St. O. 8.

Time.—21 *infra* and St. O. 7.

Reinstating Case after Dismissal.—23 (n).

Appeal committee. Counsel not heard. Affidavits.

20. Counsel are not heard before the Appeal Committee. All affidavits intended to be used in the Appeal Committee must be lodged with the opposing agent within a reasonable time before the meeting of the committee, but are not to be filed in the Parliament office.

Directions for Agents

21. In English appeals six weeks' time, and in Irish and Scotch appeals eight weeks' time, from the date of the presentation of the appeal, is granted to all parties to lodge printed cases and the appendix thereto. These periods, when expiring during a recess of the House, are extended by Standing Order No. VII. Petitions for extension of time, *lodged* during the *prorogation of Parliament* (unless the House of Lords be sitting for judicial business), in cases in which time has been *already extended* on petition, do not prevent the dismissal of an appeal.

Time for lodging printed cases and appendix—*see* Standing Order No. V.; and also Standing Order No. VII.

Time.—See St. O. 5 and 7: and see especially Dir. for Ag. 4, *supra*, and 22, *infra*.

22. In appeals upon a special case stated in the court below, it is optional to lodge a *joint* case with reasons *pro* and *con*, following the practice heretofore in use in common law appeals on a special case.

23. It is obligatory on the appellant, within the respective periods so limited as above, to lodge his printed cases, or the joint case before mentioned, and a printed appendix consisting of such documents, or parts thereof, used in evidence in the court below, as may be necessary for reference on the argument of the appeal in support of his case. In causes in which it may be possible to utilize, for the purposes of the Appeal to the House, printed matter, plans, &c., previously used in the courts below, it is the duty of the solicitors to communicate with the officers of the Judicial Department in order, if possible, that the cost of re-printing and re-examination may be saved. Under certain circumstances a smaller number than forty copies of such previously printed matter, &c., will be accepted. The appendix will be for the use of both parties on the hearing of the appeal. (*See* following paragraph with regard to the printing of *additional* documents by the respondent.)

Printed matter, &c., previously used in courts below.

Respondents' Cases.—22, *supra*, 30, 31, *infra*.

Default.—By appellant, 18, *supra*, St. O. 3. 5; by respondent, 30, *infra*. Where default in lodgment is made, special application (see 18) to reinstate the case must be made to the House of Lords. See St. O. 5 and 7, and *Mercier* v. *Williams*, 32 W. R. 152.

24. It is the duty of the appellant, with as little delay as possible after the presentation of the appeal, to furnish to the respondent a list of the proposed documents, and in due course a proof copy of the appendix. The proof is to be examined with the original documents by the respective solicitors of the parties. (Ten copies of the appendix, as soon as printed, to be delivered to the solicitor of the respondent.) The respondent is allowed to print any *additional* documents, used in evidence in the court below, which may be necessary for the support of his case on the argument of the appeal, such documents to be **paged consecutively** with the appendix, in order that the same may be eventually *bound* up with the appendix, and form *one* document for the use of the House on the hearing of the appeal. The proof of the respondent's additional documents is to be examined, as aforesaid, by the respective solicitors, and ten copies of the print are to be delivered to the solicitor of the appellant. Shorthand notes of arguments in the courts below must not be printed by either party.

Preparation of appendix.

Respondent's *additional* documents.

Further Evidence.—As to further evidence, see *Banco de Portugal* v. *Waddell*, 5 App. Cas. 161.

Respondents, Separate cases by, Dir. for Ag. 30, 31. Joint case, 31, 22.

25. The costs incurred in printing the appendix will, in the first instance, be borne by the appellant, and the cost of the *additional* documents by the respondent, but these costs will ultimately be subject to the decision of the House with regard to the costs of the appeal.

26. The printed case must be signed by one or more counsel who shall have attended as counsel in the court below, or shall purpose attending as counsel on the argument at the bar.

Signature of counsel to case—*see* Standing Order No. V.

See St. O. 2, St. O. 5 (3).

Directions for Agents.

Form of printed case.

Reference to report of cause below.

27. The case and appendix must be printed quarto size, with seven or eight letters down the margin, and the title page of the appellant's case must contain, at the top, a reference to the report of the cause below, if reported, or, if not reported, "catch-words" or "index-words" similar to those prefixed to reports of causes in the law reports. The case and appendix should be submitted *in proof* to the clerks in the judicial office.

Form of Printed Cases.—The cases may be drafted in the following form :—

(*Heading.*)

In the House of Lords.

On an appeal from Her Majesty's Court of Appeal (*England* [*or as the case may be*]).

The case of the appellants A. B. [*or*, of the respondents C. D.],

or

The joint case of the appellants A. B. and the respondent C. D.

Then will follow a concise statement of the case, or joint case, which may respectively conclude with a paragraph to the following effect :—

"The appellants are advised and humbly submit that the said judgment (*or* order, *or* interlocutor), of the day of , is erroneous [*or*, that the said judgment, &c., &c., so far as it is ordered, &c., is erroneous] and ought to be reversed or varied, and the appellants have appealed therefrom to this most Honourable House for amongst others the following " (*here will follow the reasons, as to which see infra*).

This paragraph in the respondent's case, or in a joint case, may run thus—

"The respondents are advised and humbly submit that the said judgment [order, *or* interlocutor] of the day of , is right, and that the same ought to be affirmed, for amongst others the following reasons." Then in each case will follow the "reasons," paragraph by paragraph, concluding generally with the following : "Because the said judgment of the C. A. [*or, as the case may be*] is right [*or* wrong], and ought to be affirmed" [*or* set aside, *or* varied, *as the case may be*].

Where the respondents are formal parties, and their case is fully stated in the case of either the appellants or respondents, they may by their case simply crave leave to refer to such other case and appendix in order to save expense, submitting that the order, &c., appealed from is right (*or otherwise*), for the reasons in the said case appearing given (*or*, for other reasons, giving them).

Counsel, Signatures of.—As to signature of counsel, see St. O. 5 (3). Dir. for Ag. 26. Time for lodging printed cases, St. O. 5 (1), Dir. for Ag. 23. Extension of time, St. O. 7, and App. C, and Dir. for Ag. 18. Cases to contain marginal notes, Dir. for Ag. 28. Lodging copies in Parliament office, *idem*, 29. As to binding copies, see 29, *infra*, and App. B.

Printing evidence.—Where a question of law is involved which may decide the appeal, the printing of the evidence may be postponed (Cf. *Metropolitan Asylums, &c.* v. *Hill*, 5 App. Cas. p. 587).

Scotch Appeals.—As to what the case on a Scotch appeal should contain, see St. O. 5 (2) ; St. O. 9.

28. Where reference is made to a document printed in the appendix the case must contain a marginal note of the page of the appendix containing such document. The appendix must contain an index to the documents therein.

Forty printed cases, &c., required to be lodged by the

29. Forty copies of each case and appendix are required to be lodged in the Parliament office ; namely, a lodgment of thirty copies in compliance with Standing Order No. V. ; and subsequently, after the exchange of cases (*see* par. 32), ten *bound* copies (*see directions in the*

appendix hereto (p. 662) *as to binding printed cases, appendix, additional documents, and printed copies of the appeal for the use of the House on the hearing of the appeal*).

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appellant and respondent.

As to number of, and binding, &c., see App. B., p. 662.

Setting down for hearing ex parte.

30. A respondent can only be heard at the bar upon lodging a printed case. If the respondent's case is not lodged within the time specified in the order of service, the cause is, on the lodgment of the appellant's case and the appendix, "set down for hearing ex parte;" but the respondent may nevertheless at any time afterwards lodge his printed case, and thus put himself in the same position as if he had lodged it within the time specified in the order of service. When, however, the lodgment has been delayed until a day for hearing the cause has been actually appointed the respondent is required to petition for leave to lodge his printed case, and submit to whatever order the House may make on his petition.

Subsequent lodgment of respondent's case.

Appellant. lodgment.—21-23, *supra.*
"*Ex parte.*"—33, *infra.*

Respondents to lodge one case.

31. Where several persons are called as respondents to an appeal, they are required, where possible, all to join in one case in answer to the appeal. The agent first offering for lodgment in the Parliament office a printed case which shall not be on behalf of all the respondents, is required to endorse on a copy of such case one or other, or both, of the following certificates, according to the circumstances of the cause, viz.:—

Separate respondents' cases.

(*a.*) "I hereby certify that I have offered due facilities for joining "with me in lodging one case to Messrs. (*set out names*), agents "for the respondents (*set out names*) whose interests are, in my "opinion, similar to those represented in this case;"

(*b.*) "I hereby certify that the interests represented in this case are, "in my opinion, distinct from those of the remaining respondents."

Where any of the other respondents desire subsequently to lodge a *separate* case, a petition must be presented to the House for leave to do so, setting forth the reasons for a severance.

Exchange of printed cases.

32. After the lodgment of the printed cases by the appellants and respondents, the respective cases (ten copies) are to be exchanged at the offices of the solicitors: the respondents' agent supplying the appellants' agent with the additional number of cases required for the ten *bound* copies.

Bound Copies.—See 29, *supra*, and App. B.

Setting down cause for hearing.

33. As soon as the printed cases of all parties and the appendix thereto have been lodged, it is optional for either side to set down the cause for hearing, but it is *obligatory* on the appellant, upon the lodgment of his printed cases and the appendix to set down the cause for hearing within the time limited by Standing Order No. V. (ex parte as to those respondents who have not already lodged printed cases, upon proof, by affidavit, of the due service of the before-mentioned "order of service" upon the respondents or their solicitors). A respondent who has lodged his printed cases is at liberty to set down the cause for hearing on the first *sitting* day after the expiration of the time limited by the standing order for lodging printed cases. The cause will then be ripe for hearing, and will take its position on the effective cause list.

St. O. 5 (1).

As to cause becoming abated, etc., see 39, *infra;* St. O. 8. Setting down "ex parte," 30, *supra.*

Causes under compromise.

34. Causes, the hearing of which has been postponed on the ground of their being under compromise, are placed at the bottom of the effective cause list in the event of no compromise being arrived at.

Hearing of the appeal.

35. On the hearing of an appeal, the agents are required to have the *originals* (or such copies thereof as were accepted in evidence in the

Directions for Agents.

court below in lieu of the originals) of all documents set forth in the printed case and appendix in readiness below the bar, in case the House desires to refer to such originals or accepted copies (*see* following paragraphs as to exception with regard to Irish and Scotch appeals).

Documents printed in the case and appendix.

36. In Irish appeals, in cases in which the original documents are filed in the Irish courts, office copies, duly signed by the proper officer of the court from whence they issue, as certifying the correctness of the same, may be used in lieu of the original documents in all cases in which the authenticity of the original documents is unquestioned (subject always to any special direction by the House on the hearing of the appeal as to the production of the originals).

Irish appeals.

Scotch appeals.

37. In Scotch appeals, a copy of the record, duly certified by the proper officer of the court below, must be lodged with the pursebearer of the lord chancellor a few days before the hearing of the appeal. Subject to special direction by the House, the originals of documents contained in the record are not required to be at the bar.

See St. O. 5 and 9, *infra*.

Admiralty actions and maritime causes.

38. Assessors in the House of Lords, admiralty actions (England) and maritime causes (Scotland).—The following orders were made by the House in this matter on the 10th and 13th of May, 1892, in pursuance of section 3 of the Supreme Court of Judicature Act, 1891; and orders to the like effect were made on the 20th of November, 1894, in pursuance of section 6 of the Nautical Assessors (Scotland) Act, 1894 :—

> Ordered, that in each cause in which the attendance of nautical assessors is required, this House be attended by two assessors, of whom one shall be an officer, active or retired, of her Majesty's navy, and the other an elder brother of the corporation of Trinity House :
>
> Ordered, that the clerk of the Parliaments do write to the secretary of the admiralty for a list of assessors specially qualified to assist this House in hearing appeals in admiralty actions; and do also write to the secretary of the corporation of Trinity House for a list of the elder brethren of the corporation similarly qualified :
>
> Ordered, that a fee of 3*l*. 3*s*. for each day or part of a day's attendance be paid by the clerk of the Parliaments to each assessor. The amount of such fees, failing any special order of the House on the subject, to be paid by the suitor against whom costs are awarded, or by his agent, into the fee fund of the House immediately after the determination of the cause :
>
> The parties or either party to an appeal may apply by letter to the clerk of the Parliaments requesting, upon grounds stated in the letter, the attendance of the assessors on the hearing at the bar, or the lord chancellor or the lord speaker may, in the absence of any application by the parties, direct the attendance of the assessors. Such assessors shall be selected by the lord chancellor or by the lord speaker from the lists of assessors furnished to the clerk of the Parliaments by the secretary of the admiralty and the secretary of the corporation of Trinity House.

Abatement—*see* Standing Order No. VIII.

39. In the event of the death of any of the parties to an appeal, immediate notice should be given by letter addressed to the clerk of the Parliaments, and lodged in the judicial office. The letter must state whether the appeal abates or does not abate by reason of the death in question.

An appeal is held to abate through death when it becomes necessary to add a new party or parties to the appeal to represent the deceased person's interest.

An appeal is held not to abate through death when the interest of

Directions for Agents.

the deceased person is represented by any of the surviving parties to the appeal.

In appeals from England and Ireland, in which it is necessary to add new parties to the appeal, an order must be first obtained in the court below making such persons parties to the cause, and an office copy of the order must be annexed to the petition for revival presented to this House.

See St. O. 8. As to petition for revivor, see Dir. for Ag. 19, *supra*.

In appeals from Scotland, the record being closed in the court below, the petition for revival is presented directly to the House, and a certified copy of the confirmation of the executors of the deceased person must be annexed to the petition.

In the case of appeals which do not abate through death it is necessary in the printed cases to print the words "(since deceased)" against the name of the deceased person in the title of the appeal.

Defect through bankruptcy—*see* Standing Order No. VIII.

In the case of an appeal which becomes defective through the bankruptcy of any of the parties, a letter must be addressed to the clerk of the Parliaments, and lodged in the judicial office, stating the fact of such bankruptcy, and to this letter must be annexed an office copy of the order of the court adjudicating bankruptcy.

The effect of abatement, or of defect through bankruptcy on the procedure of the appeal, the period within which steps must be taken for a revival of the appeal, or for rendering the same effective, and regulations for the lodgment of supplemental cases, are set forth in Standing Order No. VIII.

Costs—*see* Standing Order No. X., and directions as to the taxation of costs, Appendix E.

40. Forms of bills of costs relating to appeal cases may be obtained at the office for the sale of printed papers, House of Lords.

See note, App. E., *post*.

Directions as to the sum of £200 under Standing Order No. IV.

Appeals affirmed.

41. In all cases where the appellant has paid in the sum of 200*l*. as directed by Standing Order No. IV., and where the House shall make any order for payment of costs by the appellant to the respondent, the clerk of the Parliaments or clerk assistant shall pay over to the respondent or his agent the said sum of 200*l*., or so much thereof as will liquidate the amount reported to the clerk of the Parliaments or clerk assistant by the taxing officer, as being due from the appellant to the respondent in respect to the appeal. And in all cases where the amount so reported by the taxing officer shall exceed 200*l*., the clerk of the Parliaments or clerk assistant shall in his certificate credit the appellant with the 200*l*. so paid over to the respondent. And where there shall be two or more respondents entitled to their separate costs, the said 200*l*. shall be divided between the respondents in proportion to the amount of costs reported by the taxing officer to be due to each respondent. And where, after satisfying the order of the House, there shall be any sum remaining, part of the said 200*l*., the same shall be paid back to the appellant or his agent upon a proper receipt for the same being given to the clerk of the Parliaments or clerk assistant.

See Dir. for Ag. 14, *supra*, App. E., *infra*.

Appeals reversed.

42. In all cases in which the appellant is not ordered to pay the costs of the appeal, the clerk of the Parliaments or clerk assistant shall, on receiving a proper receipt for the same, pay back to the appellant or his agent the said sum of 200*l*.

Appeals dismissed for want of prosecution.

43. In cases in which an appeal is dismissed for want of prosecution, the appellant shall be at liberty to serve a notice of such dismissal according to the form set forth in Appendix D. upon the agent of the respondents (such service to be verified, if necessary, by affidavit), and unless the respondent shall, within four weeks from the date of such service, if the House be sitting at the expiration of the said four weeks, or, if not, then not later than the third sitting day of the next ensuing

sittings of the House, lodge in the office of the taxing officer of the House a copy of his bill of costs, the clerk of the Parliaments or clerk assistant shall, upon a proper receipt for the same being given, repay to the appellant or his agent the said sum of 200*l.* In the event of the respondent so lodging his bill of costs as aforesaid, the taxing officer may, if the sum demanded by the respondent be less than 200*l.*, tax the same, and the clerk of the Parliaments or clerk assistant shall pay over to the respondent or his agent so much of the said sum of 200*l.* as will liquidate the amount reported to the clerk of the Parliaments or clerk assistant as being due from the appellant to the respondent in respect of the appeal, and the remaining portion of the said sum of 200*l.* shall be paid back to the appellant or his agent upon a proper receipt for the same being given to the clerk of the Parliaments or clerk assistant.

See St. O. 5 ; *Milson* v. *Carter*, (1893) A. C. 638 ; App. D., *infra*.

SUMMARY OF ORDINARY PROCEDURE IN APPEALS.

(*For full instructions see foregoing "Directions for Agents," and the Standing Orders.*)

See also, Synopsis of Procedure, p. 642, *supra*.

Ordinary Procedure in Appeals.

1. A proof copy of the petition of appeal may, when deemed necessary, be submitted to the clerks of the judicial department.
2. Lodgment of appeal, printed on parchment, together with four paper copies thereof, in the Parliament office for presentation to the House,—intimation with regard to recognizance and bond.
3. Issue to appellant's agent of "Order of Service."
4. Payment of 200*l.*, or lodgment of certificate with regard to bond ; and lodgment of certificate with regard to substitute for recognizance.
5. Issue to appellant's agent of recognizance and bond for execution.
6. Return of recognizance and bond.
7. Attendance of respondent's agent to enter appearance, and inspect recognizance and bond.
8. Return of "Order of Service," with affidavit entered thereon.
9. Lodgment of thirty printed copies of case and appendix. A proof copy of the case may, when deemed necessary, be submitted to the clerks of the judicial department.

 See Dir. for Ag. 29 ; App. B.
10. Setting down cause for hearing.
11. Lodgment by appellant of ten bound copies of cases, &c.
12. Hearing of appeal, directions as to original documents.
13. Directions with regard to abatement by death, or defect by bankruptcy.
14. Directions with regard to the taxation of costs, &c.

STANDING ORDERS APPLICABLE TO ALL APPEALS PRESENTED TO THE HOUSE OF LORDS ON OR AFTER THE 1ST DAY OF NOVEMBER, 1876.

Standing Orders.

STANDING ORDER I.

(Standing Order I. is only applicable to Decrees, &c., pronounced on and after the 1st day of November, 1876.)

Time limited for presenting appeals.

Ordered, that, except where otherwise provided by statute, no petition of appeal be received by this House unless the same be lodged in the Parliament office for presentation to the House within one year from the date of the last decree, order, judgment, or interlocutor appealed from.

In cases in which the person entitled to appeal be within the age of one and twenty years, or covert, non compos mentis, imprisoned, or out of Great Britain and Ireland, such person may be at liberty to present his appeal to the House, provided that the same be lodged in the Parliament office within one year next after full age, discoverture, coming of sound mind, enlargement out of prison, or coming into Great Britain or Ireland : But in no case shall any person or persons be allowed a longer time, on account of mere absence, to present an appeal, than five years from the date of the last decree, order, judgment, or interlocutor appealed against.

Divorce Appeals.—Appeals under Divorce Act are to be within a month after decision of C. A. if H. of L. then sitting, otherwise fourteen days (J. A. 1881, s. 9, Part V., *ante* ; *Clearer* v. *C.*, 9 App. Cas. 631).

Presentation of Appeal.—See Dir. for Ag. 1, 2, *ante*.

Suspension of Order.—If this order can be suspended it would only be so suspended upon some exceptional and extraordinary good ground (*Phillips* v. *Fothergill*, 11 App. Cas. 468).

"**Within one Year.**"—The House can in some cases entertain an appeal from a previous order of the C. A. made more than a year before, but no definite rule can be laid down (*Concha* v. *C.*, (1892) A. C. 670).

"**The last decree, order, &c., appealed against.**"—These words cannot enable an appellant to commence an appeal, after the lapse of twelve months, against a party wholly unaffected by the subsequent decree or order. Therefore where a petition of appeal was presented on 16th Jan., 1885, against two orders of the C. A., dated July, 1883, and Jan., 1884, the first of such orders affecting one M. F., and the latter not, the appeal was dismissed as against M. F. (*Phillips* v. *Fothergill*, 11 App. Cas. 466).

Practice when Petition out of Time.—A petition should be presented (see Dir. for Ag. 18, 19) praying that the petition out of time should be dismissed (*Phillips* v. *Fothergill*, *supra*).

STANDING ORDER II.

Appeals to be signed and certified by counsel.

Ordered, that all petitions of appeal be signed, and the reasonableness thereof certified, by two counsel who shall have attended as counsel in the court below, or shall purpose attending as counsel at the hearing in this House.

Scotch Appeals.—As to Scotch appeals, see St. O. 9.

Paupers.—As to paupers, see Appeal (Formâ Pauperis) Act, 1893, p. 525, and Dir. for Ag. 16.

STANDING ORDER III.

"Order of service."

Ordered, that the "order of service" issued upon the presentation of an appeal for service on the respondent or his solicitor, be returned to the Parliament office, together with an affidavit of due service entered thereon, within the time limited by Standing Order No. V. for the

Standing Orders.

appellant to lodge his printed cases, unless within that period all the respondents shall have lodged their printed cases; in default, the appeal to stand dismissed.

"*Order of Service.*"—See as to order of service, Dir. for Ag. 3 and 4, *ante*, and note to St. O. 5 (1), *infra*.

Time, Extension of.—St. O. 7; abatement, Dir. for Ag. 39; St. O. 8; default, St. O. 5, note.

Dismissal.—St. O. 4, 5 (1), 8: for want of prosecution, Dir. for Ag. 43.

STANDING ORDER IV.

Security for costs.

Ordered, in all appeals, that the appellant or appellants do give security to the clerk of the Parliaments by recognizance to be entered into, in person or by substitute, to the Queen of the penalty of five hundred pounds, conditioned to pay to the respondent or respondents all such costs as may be ordered to be paid by the House in the matter of the appeal; and further, that the appellant or appellants do procure two sufficient sureties, to the satisfaction of the clerk of the Parliaments, to enter into a joint and several bond, to the amount of two hundred pounds, or do pay in to the account of the Security Fund Account of the House of Lords the sum of two hundred pounds; such bond, or such sum of two hundred pounds, to be subject to the order of the House with regard to the costs of the appeal: Ordered, that within one week after the presentation of the appeal the appellant or appellants do pay in to the account of the Security Fund Account of the House of Lords the said sum of two hundred pounds, or submit to the clerk of the Parliaments the names of the sureties proposed to enter into the said bond; and, in the event of a substitute being proposed to enter into the said recognizance, the name of such substitute; two clear days' previous notice of the names so proposed for bond and recognizance to be given to the solicitor or agent of the respondent.

"**In all Appeals.**"—Leave to appeal *in formâ pauperis* must be obtained from the House itself or security must be given. cf. *Lee* v. *Williams*, House of Lords Journal, 1886. See (n.) "Paupers," p. 644.

Security.—See Dir. for Ag. 5—15. App. A., p. 662.

Payment out.—Dir. for Ag. 41, 42.

Justification of sureties and substitute.

Ordered, that, in the event of the clerk of the Parliaments requiring a justification of the sureties, or substitute, the appellant's agent shall, within one week from the date of an official notice to him to that effect, lodge in the Parliament office an affidavit or affidavits by the proposed sureties, or substitute, setting forth specifically the nature of the property in consideration of which they claim to be accepted as sureties in respect of the bond, or as substitute in respect of the recognizance, and also declaring that the property in question is unincumbered, and that after payment of all just debts and liabilities such sureties or substitute are each well and truly worth the sums required under the bond or the recognizance respectively: Ordered, that, in the event of such sureties not being deemed satisfactory by the clerk of the Parliaments, the appellant or appellants shall, within four weeks from the date of an official notice by the clerk of the Parliaments to that effect, pay in to the account of the Security Fund Account of the House of Lords the sum of two hundred pounds, to be subject to the order of the House with regard to the costs of the appeal; and, in the event of such substitute not being deemed satisfactory by the clerk of the Parliaments, the appellant or appellants shall enter into the usual recognizance in person:

Period for return of bond

Ordered, that the said bond and the recognizance (whether entered into by the appellants or by a substitute) be returned to the Parliament

office duly executed within one week from the date of the issue thereof to the solicitor or agent of the appellant or appellants. **Standing Orders.**

On default by the appellant or appellants in complying with the above conditions, the appeal to stand dismissed. and recognizance to Parliament office.

As to expiry and extension of time, see St. O. 7; abatement, St. O. 8; default, St. O. 3, 5, note.

STANDING ORDER V.

1. Ordered, that in English appeals the printed cases and the appendix thereto be lodged in the Parliament office within six weeks from the date of the presentation of the appeal to the House; in Scotch and Irish appeals, within eight weeks; and the appeal set down for hearing on the first *sitting* day after the expiration of those respective periods (or as soon before, at the option of either party, as all the printed cases and the appendix shall have been lodged); on default by the appellant the appeal to stand dismissed. Printed cases, time limited for lodging, and for setting down the cause for hearing.

Note.—The several periods limited by these St. Orders take effect from the date of the *presentation of the appeal*, which is *the date at the head of the order of service*; see Dir. for Ag. 3 and 4. As to forms, see Dir. for Ag. 27. As to copies, *idem*, 29. As to times for lodging cases, Dir. for Ag. 23, 30. As to extension of time, see St. O. 7. Abatement, St. O. 8. As to default by appellant and reinstating case, see *Mercier* v. *Williams*, 32 W. R. 152; and see Dir. for Ag. r. 23, *ante*. Default by respondent Dir. for Ag. 30. Petition for further time, App. C.

"**To stand Dismissed.**"—See *Milson* v. *Carter*, (1893) A. C. 638.

Cross Appeals.—See St. O. VI.

2. Ordered, that in all appeals from Scotland the appellant alone, in his printed case or in the appendix thereto, shall lay before this House a printed copy of the record as authenticated by the Lord Ordinary; together with a supplement containing an account, without argument or statement of other facts, of the further steps which have been taken in the cause since the record was completed, and containing also copies of the interlocutors or parts of interlocutors complained of; and each party shall in their cases lay before the House a copy of the case presented by them respectively to the Court of Session, if any such case was presented there, with a short summary of any additional reasons upon which he means to insist; and if there shall have been no case presented to the Court of Session, then each party shall set forth in his case the reasons upon which he founds his argument, as shortly and succinctly as possible. Scotch appeals.

See St. O. 9; Dir. for Ag. 21, 37.

3. Ordered, that all printed cases be signed by one or more counsel, who shall have attended as counsel in the court below, or shall purpose attending as counsel at the hearing in this House. Printed cases to be signed by counsel.

See Dir. for Ag. 26. As to Scotch appeals, St. O. 9.

STANDING ORDER VI.

Ordered, that all cross appeals be presented to the House within the period allowed by Standing Order No. V. for lodging cases in the original appeal. Cross appeals.

[See next Order.]

Standing Orders.

STANDING ORDER VII.

Expiry of time during recess.

Ordered, with regard to appeals in which the periods under Standing Orders Nos. III., IV., V., and VI., expire during the recess of the House, that such periods be extended to the third sitting day of the next ensuing meeting of the House.

See Dir. for Ag. 4, 18, 21.

STANDING ORDER VIII.

Abatement or defect.

Ordered, that in the event of abatement by death or defect through bankruptcy, an appeal shall not stand dismissed for default under Standing Orders Nos. III., IV., V., provided that notice of such abatement or defect be given by letter addressed to the clerk of the Parliaments and lodged in the judicial office prior to the expiration of the period limited by the standing order under which the appeal would otherwise have stood dismissed.

See Dir. for Ag. 39; and see *Mercier* v. *Williams*, 32 W. R. 152.

Revivor, &c.

Ordered, that all appeals marked on the cause list of the House as abated or defective shall stand dismissed unless within three months from the date of the notice to the clerk of the Parliaments of abatement or defect, if the House be then sitting, or, if not, then not later than the third sitting day of the next ensuing sittings of the House, a petition shall be presented to the House for reviving the appeal or for rendering the same effective.

Supplemental cases to be delivered in where appeals are revived or parties added.

Ordered, that where any party or parties to an appeal shall die pending the same, subsequently to the printed cases having been lodged, and the appeal shall be revived against his or her representative or representatives as the person or persons standing in the place of the person or persons so dying as aforesaid, a supplemental case shall be lodged by the party or parties so reviving the same respectively, stating the order or orders respectively made by the House in such case.

The like rule shall be observed by the appellant and respondent respectively, where any person or persons shall, by leave of the House, upon petition or otherwise, be added as a party or parties to the said appeal after the printed cases in such appeal shall have been lodged.

On the motion of the L. C., 12 Aug. 1884. the former Standing Order No. 8 was vacated, and the above made in lieu thereof.

As to costs where a legal personal representative carries on the appeal, *Boynton* v. *B.*, 4 App. Cas. 736.

STANDING ORDER IX.

Scotch appeals.

Certificate of leave or difference of opinion to be signed by counsel on appeals.

Ordered, that when any petition of appeal shall be presented to this House from any interlocutory judgment of either division of the Lords of Session in Scotland, the counsel who shall sign the said petition, or two of the counsel for the party or parties in the court below, shall sign a certificate or declaration, stating either that leave was given by that division of the judges pronouncing such interlocutory judgment to the appellant or appellants to present such petition of appeal, or that there was a difference of opinion amongst the judges of the said division pronouncing such interlocutory judgment.

See Dir. for Ag. 37; St. O. 5 (2), *supra*.

As to time for lodging cases in Irish and Scotch appeals, see Dir. for Ag. 21.

STANDING ORDER X.

Taxation of costs.

Ordered, that the clerk of the Parliaments shall appoint such person as he may think fit as taxing officer, and in all cases in which this House

shall make any order for payment of costs by any party or parties in any cause without specifying the amount, the taxing officer may, upon the application of either party, tax and ascertain the amount thereof, and report the same to the clerk of the Parliaments or clerk assistant: And it is further ordered, that the same fees shall be demanded from and paid by the party applying for such taxation for and in respect thereof as are now or shall be fixed by any resolution of this House concerning such fees; and the taxing officer may, if he think fit, either add or deduct the whole or a part of such fees at the foot of his report: And the clerk of the Parliaments or clerk assistant may give a certificate of such costs, expressing the amount so reported to him as aforesaid, and in his certificate regard shall be had to the sum of 200*l.* where that amount has been paid in to the account of the Security Fund Account of the House as directed by Standing Order No. IV.; and the amount in money certified by him in such certificate shall be the sum to be demanded and paid under or by virtue of such order as aforesaid for payment of costs.

See (n.) "Costs," *supra*, p. 645 and App. E., p. 664.

The House of Lords has jurisdiction over the costs of all appeals to that House (*The Guardians of West Ham* v. *The Churchwardens, &c.*, (1896) A. C. 477, considered in *Manchester, &c., Ry. Co.* v. *Doncaster Guardians, &c.*, (1897) 1 Q. B. 117).

Until the amount of costs is certified as directed by this standing order, there is no "debt" in respect of such costs (*Ibid.*).

Appendices.

APPENDIX A.

(Certificate of Sufficiency of Sureties, &c.)

Lodged in the Parliament office on the day of , 18 .

In the House of Lords.

"A. and others *v.* B. and others."

In compliance with Standing Order No. IV., I (we) submit the names of (*full name*) of (*address*) and (*full name*) of (*address*) {as fit and / *or*, as a fit and} proper sureties / proper substitute} to enter into the {bond / recognizance} thereby required: and I (we) certify that, in {my / our} belief, the said (*full name*) and the said (*full name*) {are each / is} worth upwards of {£200 / £500} over and above {their / his} just debts.

This certificate may be signed by the COUNTRY solicitor or agent of the appellants.

I (we) certify that a copy of the above certificate, with two clear days' notice of the intention to lodge the same in the Parliament office, has been served on the solicitors or agents of the respondents.

To be signed by the LONDON solicitor or agent of the appellants.

See Dir. for Ag. 7.

APPENDIX B.

(Directions for Binding Printed Cases and Printed Copies of the Appeal for the use of the Law Lords.)

1. Ten copies bound in purple cloth (*no copies to be interleaved*).
2. Short title of cause on the back.
3. Label on side, stating short title of cause and contents of the volume thus:—
 "A——— and others *v.* B——— and others."
 Printed copy of the appeal.
 Appellants' case.
 Respondent B's case.
 Respondent C's case (where *separate* cases are allowed to be lodged on behalf of the respondents).
 Appendix (consisting of the appendix lodged by the appellant, and the *additional* documents, if any, lodged by the respondent).
4. The volume to be indented, and the names of the parties written on the indentations to their respective cases.
5. The bound copies to be lodged immediately after the respondent's cases are delivered in.

It is the duty of the appellants' agent to carry out these directions.

See Dir. for Ag. 29; St. O. 5.

APPENDIX C.

(Petition for Extension of Time to Lodge Cases, &c.)

(*To be engrossed on foolscap paper, and lodged in the Parliament Office, if assented to by Respondent's Agent. If not assented to, a copy, and two clear days' notice of intention to present, must be given to Respondent's Agent, and the original Petition, and a* duplicate *thereof, lodged in the Parliament Office.*)

In the House of Lords.
(*Insert Short Title of Cause.*)

To the Right Honourable the House of Lords.

The humble petition of the appellant

Sheweth,

That your Petitioner presented Petition of Appeal on the day of complaining of (*insert dates of orders or interlocutors complained of*).

That the time allowed by Standing Order No. V. ((*or*) extended by your lordships' order of the (*state date*)) for the appellant to lodge his printed cases and the appendix, will expire on the (*state date*).

That your Petitioner (*set forth cause of delay*).

Your Petitioner therefore humbly prays that your lordships will be pleased to grant him an extension of time until (*specify the date to which extension of time is required*) to lodge his printed cases, and the appendix, and set down the cause for hearing.

And your Petitioner will ever pray.

Agents for the Appellant.

We consent to the Prayer of the above Petition.

Agents for the Respondents.

See Dir. for Ag. 18, 21. St. O. 7.

APPENDIX D.

(Form of Notice to the Respondent or his Agent with regard to the Application of the Appellant for Repayment of the Sum of £200 under Standing Order No. IV.)

In the House of Lords.

A———, Appellant.
B———, Respondent.

(Appeal lately depending in the House of Lords.)

Take notice that the above appeal has been dismissed for want of prosecution, and that the appellant intends to apply to the clerk of the Parliaments for repayment of the sum of 200*l.* paid by him into the House of Lords Security Fund Account under Standing Order No. IV. The respondent is required by the rules of the House, if any costs have been incurred by him in respect of the appeal, to lodge with the taxing officer of the House a copy of his bill of costs within four weeks from the date of the service of this notice upon the respondent or his agent, if the House of Lords be then sitting, or not later than the third day on which the House shall sit after the expiration of the said four weeks ; and in default, the clerk of the Parliaments will be at liberty forthwith to repay to the appellant the said sum of 200*l.*

To

See Dir. for Ag. 43.

Appendices.

APPENDIX E.

(Costs relating to Appeals taxed under a Judgment or Order of the House and Standing Order No. X.)

Applications must be made by depositing in the office of the taxing officer a copy of the bill of costs, with an indorsement thereon stating that "a copy of this bill of costs was on the day of served upon A. B., the agent for the appellant or the respondent, as the case may be, and we hereby request that an appointment may be made to tax the same."

Dated this day of , 18 .

A. B.,

Agent for the appellant or respondent, as the case may be.

To the Taxing Officer of the House of Lords.

NOTE.—*The Taxing Office is open throughout the Session.*

[*Printed forms of bills of costs, to be adopted by attorneys and solicitors having charge of appeal cases in the House of Lords, may be obtained at the office for the sale of printed papers, House of Lords.*]

See Dir. for Ag. 40 ; St. O. 10.

SCHEDULE OF FEES TO BE CHARGED AT THE HOUSE OF LORDS.

APPEALS.

	£	s.	d.
Order of Service	1	1	0
Entering into Recognizance	1	11	6
Order on Petition for Time to lodge Case	1	1	0
Order on Joint Petition from each Party thereto	0	10	6
Petition referred to Appeal Committee	1	1	0
Report from Appeal Committee	2	2	0
Lodging Case	2	2	0
Setting down for Hearing	1	1	0
Entering Appeal on Cause List	1	1	0
Laying Case on the Table	1	1	0
Bar Fee, Counsel attending	8	15	0
Judgment	3	3	0

TAXING FEE.

Upon the amount awarded by the taxing officer, the fee to be charged is calculated at 6*d.* in the pound up to £300, and 1 per cent. beyond that sum calculated at the rate of 5*s.* for each £25 or portion of £25.

DIRECTIONS AS TO PAUPER COSTS, WHEN AWARDED.

1. The fees of this House are to be disallowed.
2. Also the fees of counsel.
3. The solicitor to have his costs out of pocket, with a reasonable allowance to cover office expenses, including clerks, &c.

See (n.) "Pauper Costs," p. 645, *supra*.

CLAIM OF PEERAGE.

	£	s.	d.
Petition of Claimant	1	1	0
Order for Committee for Privileges to meet	1	1	0
For every day the Committee meets	5	10	0
Attendance fee for each Session	4	4	0
Order for Attendance of a Witness	1	1	0
Every Witness sworn	0	2	0
Order for printing Evidence	1	1	0
Laying Case on the Table	2	2	0
Report from Committee	1	1	0
Resolution and Judgment	2	2	0
Order that Deeds, Papers, &c., be delivered to Agent	1	1	0

The above Fees to be charged to any Petitioner heard in opposition to a Claim.

CLAIM TO VOTE AT ELECTIONS OF REPRESENTATIVE PEERS.

	£	s.	d.
On Presentation of Petition	1	1	0
Lord Chancellor's Report	1	1	0
Order made thereon	1	1	0

HENRY GRAHAM,
Cler: Parliamentor.

PART VIII.

A TABLE

SHOWING THE RULES OF THE SUPREME COURT, 1883, CORRESPONDING TO THE RULES OF THE SUPREME COURT, 1875, THE CONSOLIDATED AND GENERAL ORDERS OF THE HIGH COURT OF CHANCERY, AND THE RULES OF THE COURT OF ADMIRALTY, &c., NOW REPEALED.

R. S. C. Jud. Act, 1875, sched.	R. S. C. 1883.
O. 1, r. 1	**O. 1**, r. 1
r. 2 (obsolete)	
r. 3	r. 2
O. 2, rr. 1—3	**O. 2**, rr. 1—3
r. 3A (obsolete)	
rr. 4, 5	rr. 4, 5
r. 6 (obsolete)	
r. 6A	r. 6
r. 7	r. 7
r. 7A (obsolete)	
r. 8	r. 8
O. 3, r. 1	**O. 3**, r. 1
r. 2	**O. 3**, r. 2; **O. 28**, r. 1
rr. 3—8	rr. 3—8
O. 4, rr. 1, 2, 2A	**O. 4**, rr. 1, 2
r. 3 (obsolete)	
r. 3A	r. 3
O. 5, rr. 1—4	**O. 5**, rr. 1—5
r. 4A (obsolete)	
r. 4AA (not revived)	
rr. 5—9	rr. 10—14
r. 10	r. 15
r. 11 (obsolete)	
r. 11A.	rr. 16, 17
rr. 12, 12A (obsolete)	
O. 6, rr. 1, 2	**O. 6**, rr. 1, 2
O. 7, rr. 1, 2	**O. 7**, rr. 1, 2
O. 8, rr. 1, 2	**O. 8**, rr. 1, 2
O. 9, rr. 1—8	**O. 9**, rr. 1—9
rr. 9—13	rr. 11—15
O. 10	**O. 10**
O. 11, rr. 1—4	**O. 11**, rr. 1—5
r. 5	r. 7
O. 12, r. 1	**O. 12**, r. 1
r. 1A	rr. 2, 3
O. 12, rr. 2—5	**O. 12**, rr. 4—7
r. 6	rr. 8, 9
r. 6A (obsolete)	
rr. 7—14	rr. 10—18
rr. 15—22	rr. 22—29
O. 13, rr. 1—4	**O. 13**, rr. 1—4
r. 5	r. 3
r. 5A.	r. 11
rr. 6—8.	rr. 7—9
r. 9	r. 12
r. 10 (obsolete)	
O. 14, r. 1 (obsolete)	
rr. 1A—6	**O. 14**, rr. 1—6
O. 15, rr. 1, 2	**O. 15**, rr. 1, 2
O. 16, rr. 1, 2	**O. 16**, rr. 1, 2
rr. 3—7.	rr. 4—8
r. 8	r. 16
r. 9	r. 9
r. 9A.	r. 32
r. 10	r. 14
r. 10A	r. 15
r. 11 (obsolete)	
r. 12	r. 10
r. 12A	r. 44
r. 12B	r. 47
rr. 13—15	rr. 11—13
rr. 16, 17 (not revived)	
rr. 18—20	rr. 48, 49
r. 21	rr. 52, 53
O. 17, rr. 1—9	**O. 18**, rr. 1—9
O. 18	**O. 16**, r. 17
O. 19, rr. 1—4	**O. 19**, rr. 1—4
rr. 5—7.	rr. 9—11
r. 8	**O. 20**, r. 6
r. 9	r. 7
r. 10.	**O. 21**, r. 10
r. 11	r. 5

R. S. C. Jud. Act, 1875, sched.	R. S. C. 1883.
O. 19, r. 12	**O. 20**, r. 9
r. 13	**O. 21**, r. 20
r. 14	**O. 23**, r. 6
r. 15	**O. 21**, r. 21
rr. 16, 17	**O. 19**, rr. 12, 13
rr. 18—28	rr. 15—25
r. 29	**O. 35**, r. 19
r. 29A	r. 21
r. 30	**O. 19**, r. 28
O. 20, rr. 1—3	**O. 24**, rr. 1—3
O. 21, rr. 1—3	**O. 20**, rr. 1—3
r. 4 (not revived)	
O. 22, rr. 1—4	**O. 21**, rr. 6—9
rr. 5—11	rr. 11—18
O. 23, rr. 1—3	**O. 26**, rr. 1—3
O. 24, rr. 1—3	**O. 23**, rr. 1—3
O. 25	**O. 23**, r. 5
O. 26	**O. 33**, r. 1
O. 27, rr. 1—10	**O. 28**, rr. 1—10
r. 11	r. 1
O. 28, rr. 1—13 (not revived)	
O. 29, rr. 1—8	**O. 27**, rr. 1—8
rr. 9—14	rr. 10—15
O. 30, r. 1	**O. 22**, rr. 1, 2
rr. 2, 3	rr. 4, 5
r. 4	r. 7
O. 31, r. 1	**O. 31**, r. 1
rr. 2—4	rr. 3—5
r. 5 (obsolete)	
r. 5A	rr. 6, 7
rr. 6, 7	rr. 8, 9
r. 8 (obsolete)	
r. 9	r. 10
r. 11	r. 14
rr. 12, 13	rr. 12, 13
rr. 14—18	rr. 15—18
rr. 19—23	rr. 20—24
O. 32, rr. 1—3	**O. 32**, rr. 1—3
r. 4	r. 7
O. 33	**O. 33**, r. 2
O. 34, rr. 1—7	**O. 34**, rr. 1—7
O. 35, r. 1 (obsolete)	
r. 1A	**O. 35**, rr. 1, 2 / **O. 36**, r. 22
r. 1B	r. 22
r. 2	**O. 35**, r. 1
rr. 3—11	rr. 4—13
r. 11A	r. 13 (4)
r. 12	r. 14
r. 13	rr. 16, 17
r. 14	r. 20
r. 15	r. 23
r. 16A	**O. 38**, r. 10
r. 16B	**O. 54**, r. 25
r. 16C	**O. 35**, r. 24
O. 36, r. 1	**O. 36**, r. 1
r. 2	r. 7

R. S. C. Jud. Act, 1875, sched.	R. S. C. 1883.
O. 36, r. 3 (not revived)	
r. 4	**O. 36**, r. 12
r. 4A	r. 12
r. 5 (not revived)	
rr. 6, 7	rr. 8, 9
rr. 8—14	rr. 13—20
r. 15	
r. 15A	rr. 22—28
r. 16 (not revived)	
rr. 17—21	rr. 30—34
r. 22 (obsolete)	
r. 22A	r. 39
rr. 23, 24	rr. 41, 42
r. 25 (not revived)	
r. 26	r. 4
r. 27	r. 7A
rr. 28, 29	rr. 43, 44
r. 29A (not revived)	
rr. 29AA—34	rr. 45—52
O. 37, r. 1	**O. 37**, r. 1
r. 2	**O. 38**, r. 1
r. 3	r. 3
rr. 3A—3D	rr. 7—10
rr. 3E, 3F	rr. 12, 13
r. 3G	r. 15
r. 4	**O. 37**, r. 5
O. 38, rr. 1—6	**O. 38**, rr. 25—30
O. 39, r. 1	**O. 39**, r. 1
r. 1A	rr. 2, 3
r. 2 (not revived)	
rr. 3, 4	rr. 6, 7
r. 5 (not revived)	
O. 40, r. 1	**O. 41**, r. 1
r. 2 (not revived)	
rr. 3, 4	rr. 2—5
r. 5	rr. 4, 6
r. 6 (obsolete)	
rr. 7—10	rr. 7—10
r. 11	**O. 32**, r. 6
O. 41, rr. 1—3	**O. 41**, rr. 1—4
rr. 4, 5	rr. 6, 7
r. 6 (not revived)	
O. 41A	**O. 28**, r. 11
O. 42, rr. 1—15A	**O. 42**, rr. 3—18
rr. 16—18	rr. 20—22
r. 19	r. 23 (*a*)
r. 20	r. 24
rr. 21—24	rr. 26—29
O. 43, r. 1	**O. 43**, r. 1
r. 2	r. 5
O. 44, rr. 1, 2	**O. 44**, rr. 1, 2
O. 45, r. 1	**O. 42**, r. 32
rr. 2—10	**O. 45**, rr. 1—9
O. 46, r. 1	**O. 46**, r. 1
r. 2 (obsolete)	
rr. 2A—7	**O. 46**, rr. 2—8
r. 8 (not revived)	

R. S. C. Jud. Act, 1875, sched.	R. S. C. 1883.
O. 46, rr. 9—11	**O. 46**, rr. 9—11
O. 47, rr. 1, 2	**O. 43**, rr. 6, 7
O. 48, rr. 1, 2	**O. 47**, rr. 1, 2
O. 49	**O. 48**, r. 1
O. 50, rr. 1—7	**O. 17**, rr. 1—7
O. 51, rr. 1, 2	**O. 49**, rr. 1—3
r. 2A	r. 5
rr. 3, 4	rr. 7, 8
O. 52, rr. 1—3	**O. 50**, rr. 1—3
rr. 4—6	rr. 6—8
rr. 7, 8	rr. 10, 11
O. 53, rr. 1—3	**O. 52**, rr. 1—3
rr. 4—8	rr. 5—9
O. 54, r. 1	**O. 54**, r. 1
rr. 2, 2A, 2B	r. 12
rr. 3—5	rr. 20—22
rr. 6, 7	rr. 24, 25
rr. 8, 9	rr. 10, 11
rr. 10—13	rr. 26—29
r. 14 (not revived)	
O. 55, r. 1	**O. 65**, r. 1
rr. 2, 3	rr. 6, 7
O. 56, r. 1	**O. 66**, r. 1
rr. 2, 3	rr. 3, 4
O. 57, rr. 1—5	**O. 64**, rr. 1—5
rr. 6, 6A	rr. 7, 8
r. 7	r. 9
r. 8	r. 11
O. 57A, rr. 1, 2	**O. 59**, rr. 1, 2
r. 3 (not revived)	
O. 58, r. 1 (not revived)	
rr. 2—18	**O. 58**, rr. 1—18
r. 19	**O. 59**, r. 4
O. 59, r. 1	**O. 70**, r. 1
r. 2	**O. 28**, r. 12
O. 60, rr. 1—3	**O. 60**, rr. 1—3
O. 60A, rr. 1—3	**O. 61**, rr. 1—3
rr. 4, 5	rr. 5—7
r. 6	r. 9
r. 7	r. 22
r. 8 (obsolete)	
r. 8A	r. 23
r. 9	r. 25
rr. 10, 11	rr. 26—28
r. 12	rr. 32, 33
O. 61, r. 1	**O. 63**, r. 1
r. 2	r. 4
r. 2A (obsolete)	
rr. 3—6	rr. 5—12
rr. 7, 8	rr. 15, 16
O. 62, r. 1	**O. 68**, r. 1
rr. 2—5	r. 2
r. 6	r. 6
O. 63, rr. 1, 2	**O. 71**, r. 1
O. 64, r. 1 (obsolete)	
rr. 2, 3	**O. 61**, rr. 10, 11

R. S. C.	R. S. C. 1883.
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O. 1	**O. 66**, r. 5
O. 2	r. 6
O. 3	**O. 38**, r. 30
O. 4 (obsolete)	
O. 5, rr. 1—15	**O. 66**, r. 7
O. 6, rr. 1, 2 (not revived)	
r. 3	**O. 65**, r. 9
r. 4 (obsolete)	
Special Allowances.	
O. 6, rr. 1—7	**O. 65**, r. 27 (1—7)
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rr. 22A, 23	r. 27 (24, 25)
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RR. 1—4 (obsolete)	
R. 5	**O. 9**, r. 11
R. 6	r. 12
R. 7	**O. 13**, r. 11
R. 8 (obsolete)	
R. 9	**O. 26**, r. 2
R. 10	**O. 35**, r. 13 (4)
R. 11	r. 23
R. 12 (obsolete)	
R. 13	**O. 36**, r. 16
R. 14 (obsolete)	
R. 15	**O. 63**, r. 7
R. 16 (obsolete)	
Feb. 1876.	
RR. 1, 2 (obsolete)	
R. 3	**O. 4**, r. 3
R. 4	**O. 5**, rr. 16, 17
R. 5 (obsolete)	
R. 6	**O. 28**, r. 1
R. 7	**O. 65**, r. 6
R. 8	**O. 64**, r. 9
R. 9	**O. 63**, r. 8
R. 10	r. 16
June, 1876.	
RR. 1—3 (obsolete)	
R. 4	**O. 9**, r. 7
R. 5	**O. 11**, r. 2
R. 6	**O. 12**, r. 16
R. 7	**O. 16**, r. 32
R. 8	r. 15
R. 9 (obsolete)	
R. 10	**O. 26**, r. 3
R. 11 (obsolete)	
R. 12	**O. 35**, rr. 1, 2 **O. 36**, r. 22

R. S. C.	R. S. C. 1883.
R. 13	O. 36, r. 12
RR. 14—16	rr. 45—47
R. 17 (obsolete)	
R. 18	O. 49, r. 5
R. 19	O. 54, r. 12
R. 20 (obsolete)	
Dec. 1876.	
RR. 1, 2 (obsolete)	
R. 3	O. 36, r. 39
R. 4 (not revived)	
R. 5	O. 39, r. 1
R. 6 (obsolete)	
R. 7	O. 41, rr. 3—5
RR. 8, 9	O. 59, rr. 1, 2
R. 10 (not revived)	
R. 11	O. 59, r. 4
May, 1877.	
RR. 1, 2 (obsolete)	
R. 3	O. 14, r. 1
June, 1877.	
RR. 1, 2 (obsolete)	
R. 3 (not revived)	
R. 4	O. 49, r. 2
Nov. 1878.	
RR. 1, 2 (obsolete)	
R. 3	O. 31, rr. 6, 7
R. 4	O. 54, r. 12
March, 1879.	
RR. 1—3 (obsolete)	
R. 4	O. 35, r. 21
R. 5	O. 36, r. 52
R. 6	O. 39, rr. 2, 3
R. 7	O. 50, r. 10
R. 8	O. 54, r. 24
R. 9	O. 58, r. 5
R. 10 (obsolete)	
Dec. 1879.	
RR. 1, 2 (obsolete)	
R. 3	O. 36, r. 22
R. 4	rr. 22—28
R. 5	O. 28, r. 11
R. 6	O. 60, r. 3
RR. 7—10	O. 61, rr. 1—4

R. S. C.	R. S. C. 1883.
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RR. 1—3 (obsolete)	
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R. 5	O. 12, rr. 2, 3
R. 6	rr. 8, 9
R. 7	O. 16, r. 44
R. 8	r. 47
R. 9	O. 34, r. 6
R. 10	r. 7
R. 11	O. 35, r. 5
RR. 12—15	O. 38, rr. 7—10
RR. 16, 17	rr. 12, 13
R. 18	r. 15
R. 19	O. 41, r. 2
R. 20	O. 42, r. 18
RR. 21—24	O. 46, rr. 2—6
R. 25 (not revived)	
RR. 26—30	rr. 7—11
R. 31	O. 47, r. 2
R. 32	O. 50, r. 11
R. 33	O. 54, r. 25
RR. 34, 35	rr. 10, 11
RR. 36—39	rr. 26—29
R. 40 (not revived)	
R. 41	O 65, r. 7
R. 42	O. 64, r. 8
R. 43	r. 11
R. 44	O. 28, r. 12
R. 45	O. 61, rr. 6, 7
R. 46	r. 9
R. 47	r. 22
R. 48 (obsolete)	
RR. 49—51	rr. 25—28
R. 52	rr. 32, 33
R. 53	O. 63, r. 9
RR. 54—58	O. 68, rr. 1, 2
R. 59	r. 6
R. 60	O. 71, r. 1
R. 61 (obsolete)	
RR. 62, 63	O. 61, rr. 10, 11
RR. 64, 65 (obsolete)	
May, 1880.	
RR. 1, 2 (obsolete)	
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R. 4 (obsolete)	
R. 5	O. 61, r. 23
R. 6	O. 63, r. 10

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Prelim. Order, rr. 1—11 (obsolete)	
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r. 35	**O. 61**, rr. 1, 30
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r. 38	**O. 65**, rr. 6, 7
r. 39	**O. 61**, r. 5
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r. 41	r. 13
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r. 4.	**O. 67**, rr. 2, 4
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r. 9.	**O. 12**, r. 9
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r. 3.	**O. 61**, r. 3
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r. 5 (obsolete)	
r. 6 (not revived)	
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r. 5.	**O. 66**, r. 7 (*c*)
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C. O. 14, rr. 1—18 (obsolete)	
C. O. 15, rr. 1—6 (obsolete)	
C. O. 16, rr. 1—21 (obsolete)	
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C. O. 18, rr. 1, 2	**O. 38**, r. 7
rr. 3, 4 (obsolete)	
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C. O. 19, rr. 1—3 (obsolete)	
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r. 6	**O. 31**, r. 24
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rr. 8, 9	rr. 33, 34
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rr. 3—5 (obsolete)	
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r. 7	**O. 41**, rr. 3, 4
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r. 10 (not revived)	
r. 11	r. 3
r. 12 (not revived)	
r. 13	r. 5
C. O. 30, rr. 1, 2 (obsolete)	
r. 3	**O. 36**, r. 35
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C. O. 32, r. 1	**O. 17**, r. 6
rr. 2, 3 (obsolete)	
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r. 2	**O. 52**, r. 5
rr. 3—5 (obsolete)	
r. 6	**O. 38**, r. 26
r. 7	r. 37
rr. 8—10 (obsolete)	
r. 11	**O. 28**, r. 7
rr. 12, 13 (obsolete)	
C. O. 34, rr. 1—3	**O. 52**, rr. 16—18
C. O. 35, r. 1	**O. 55**, r. 1
rr. 2, 3	**O. 54**, r. 10 **O. 55**, r. 20
r. 4	r. 24
r. 5	r. 20
r. 6 (obsolete)	
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rr. 8, 9	**O. 55**, rr. 22, 23
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r. 40	r. 54
r. 41 (not revived)	
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r. 60	**O. 38**, r. 11
rr. 61, 62 (not revived)	
C. O. 36, rr. 1, 2 (obsolete)	
rr. 3—12	**O. 66**, r. 7
r. 13 (not revived)	
C. O. 37, r. 1 (not revived)	
r. 2	**O. 64**, r. 11
rr. 3—8 (obsolete)	
r. 9	**O. 64**, r. 12
rr. 10—12	rr. 1—3
rr. 13, 14	rr. 5, 6
rr. 15, 16 (obsolete)	
rr. 17, 18	**O. 64**, r. 7
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rr. 18, 19 (obsolete)	
r. 20	**O. 65**, r. 27 (47)
r. 21	r. 27 (50)
rr. 22, 23 (not revived)	
r. 24	**O. 55**, r. 58
r. 25	**O. 65**, r. 27 (26)
rr. 26, 27	rr. 20, 21
r. 28	**O. 55**, r. 42

Cons. Chan. Ord. 1860.	R. S. C. 1883.
C. O. 40, r. 29	**O. 65**, r. 27 (16)
r. 30	**O. 65**, r. 23
r. 31	**O. 54**, r. 7
r. 32	**O. 65**, r. 27 (29)
rr. 33, 34	r. 27(39,40)
rr. 35, 36 (obsolete)	
r. 37	r. 23
rr. 38—40	r. 27 (33—35)
C. O. 41, rr. 1—9 (obsolete)	

Cons. Chan. Ord. 1860.	R. S. C. 1883.
C. O. 41, r. 10	**O. 55**, r. 13
rr. 11, 12	**O. 65**, rr. 24, 25
r. 13	**O. 55**, r. 14
rr. 14—52 (obsolete)	
C. O. 42, rr. 1, 2 (not revived)	
r. 3	**O. 61**, r. 30
rr. 4—8 (obsolete)	
rr. 9—11	**O. 55**, rr. 62—64
rr. 12, 13	**O. 60**, r. 4
r. 14	**O. 61**, r. 14

Chan. Gen. Ord.	R. S. C. 1883.
March 6, 1860.	
Obsolete.	
March 20, 1860.	
RR. 1—4	**O. 52**, rr. 19—22
R. 5	**O. 65**, r. 26
Feb. 1, 1861.	
RR. 1. 2	**O. 22**, rr. 17, 18
RR. 3—5 (obsolete)	
R. 6	**O. 37**, r. 11
RR. 7—10 (obsolete)	
R. 11	**O. 37**, r. 5
RR. 12—14 (obsolete)	
R. 15	**O. 37**, r. 21
R. 16 (not revived)	
R. 17 (obsolete)	
R. 18	**O. 38**, r. 10
RR. 19, 20	rr. 28, 29
RR. 21—23 (not revived)	
R. 24	**O. 16**, r. 21
R. 25 (obsolete)	
13 July, 1861.	
Obsolete.	

Chan. Gen. Ord.	R. S. C. 1883.
1 Jan. 1862.	
Obsolete.	
16 May, 1862.	
Obsolete.	
27 May, 1865.	
RR. 1—6	**O. 55**, rr. 47—53
RR. 7, 8	rr. 55, 56
R. 9 (not revived)	
R. 10	r. 57
R. 11 (obsolete)	
RR. 12, 13	rr. 60, 61
RR. 14—16 (obsolete)	
7 May, 1866.	
Obsolete.	
22 Nov. 1866.	
Obsolete.	
17 April, 1867.	
R. 1	**O. 55**, r. 2 (15)
R. 2 (obsolete)	
RR. 3, 4	**O. 65**, r. 27 (41, 42)

Chancery Regulations.	R. S. C. 1883.
Aug. 8, 1857.	
R. 1	**O. 54**, r. 3
R. 2 (obsolete)	
R. 3	**O. 55**, r. 29
R. 4	**O. 33**, r. 7
R. 5 (obsolete)	

Chancery Regulations.	R. S. C. 1883.
R. 6	**O. 33**, r. 30
R. 7 (not revived)	
R. 8	r. 31
R. 9 (obsolete)	
R. 10	**O. 33**, r. 22
R. 11	**O. 38**, r. 23

Chancery Regulations.	R. S. C. 1883.
R. 12	O. 38. r. 24
R. 13	O. 51, r. 4
R. 14	r. 5
R. 15	r. 6
R. 16	O. 50. r. 18
R. 17	O. 66, r. 2
R. 18	O. 55, r. 72
R. 19	r. 25
R. 20	r. 26
RR. 21—24 (obsolete)	

Chancery Regulations.	R. S. C. 1883.
March 15, 1860.	
RR. 1—8 (obsolete)	
R. 9	O. 36. r. 21
RR. 10—14 (obsolete)	
RR. 15—36	O. 62. r. 5
RR. 37, 38 (obsolete)	
RR. 39, 40 (not revived)	

Admiralty Rules, 1859.	R. S. C. 1883.
RR. 1—7 (obsolete)	
RR. 8—13	O. 5. rr. 16, 17
RR. 14—36 (obsolete)	
RR. 37—40 (not revived)	
RR. 41—44	O. 12. rr. 19—21
R. 45	O. 64. r. 10
RR. 46—53	O. 29, rr. 1—8
RR. 54—56	rr. 10—12
RR. 57—61	rr. 14—18
RR. 62—64	O. 19, r. 28
RR. 65—67 (obsolete)	
R. 68	O. 20, r. 3
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RR. 70—77 (obsolete)	
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R. 80 (not revived)	
R. 81	r. 5
RR. 82—86	O. 38. rr. 7—9, 13, 16
RR. 87—89	O. 37, r. 1
R. 90	r. 11
R. 91 (not revived)	
RR. 92, 93	O. 37, r. 12
R. 94 (not revived)	
R. 95	r. 16
R. 96	O. 19, r. 9 O. 39, r. 30
R. 97	O. 59, r. 6
RR. 98—106 (obsolete)	
RR. 107—118	O. 56, rr. 1—12
RR. 119—123 (obsolete)	
RR. 124—126	O. 51, rr. 14—16
RR. 127, 128	O. 22, rr. 19, 20
R. 129 (not revived)	
R. 130	r. 21

Admiralty Rules, 1859.	R. S. C. 1883.
RR. 131—137 (not revived)	
R. 138	O. 52. r. 1
RR. 139, 140	r. 10
RR. 141—143 (obsolete)	
R. 144	O. 54. r. 1
R. 145	r. 11
RR. 146, 147	r. 5
RR. 148, 149 (not revived)	
R. 150	O. 66. r. 1
RR. 151, 152 (not revived)	
R. 153	O. 67. r. 3
R. 154 (not revived)	
R. 155	O. 52. r. 28
RR. 156—159 (not revived)	
RR. 160, 161	O. 56. rr. 8, 9
RR. 162—164 (not revived)	
RR. 165—168	O. 67. rr. 10—15
RR. 169—171 (not revived)	
R. 172	O. 67. r. 14
R. 173 (not revived: see O. 37. rr. 26—34)	
R. 174	O. 64. r. 15
RR. 175, 176 (not revived)	
R. 177	O. 65, r. 27 (14)
RR. 178—182 (not revived)	
R. 183	O. 63, r. 9
R. 184	r. 6
R. 185	O. 64, rr. 2, 12
RR. 186, 187 (obsolete)	
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R. 1 (obsolete)	
RR. 2, 3	O. 9, r. 11
RR. 4, 5	O. 13, rr. 12, 13
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A TABLE OF THE RULES OF THE SUPREME COURT MADE SINCE R.S.C. 1883.

RULES OF THE SUPREME COURT,

OCTOBER, 1884.

R. S. C., Oct., 1884.

Citation.

Commencement.

NOTE.—The following rules may be cited as the "Rules of the Supreme Court, October, 1884," and each rule may be cited separately according to the heading thereof with reference to the Rules of the Supreme Court, 1883. They shall come into operation on the 24th of October, 1884.

O. 31, r. 27A. Rule 1 of these rules, as to certificate for payment out of money lodged to "security for costs account." is printed as O. 31, r. 27A.

O. 36, r. 1A. Rule 2, as to application of O. 36, r. 1, is printed as O. 36, r. 1A.

O. 36, r. 22A. Rule 3, as to trial of Chancery witness causes, has been annulled, and another rule substituted, which is printed as O. 36, r. 22A.

Order XXXVI., rule 22, is hereby annulled, and the following rule shall stand in lieu thereof:

O. 36, r. 22B. Rule 4, the substituted rule, relating to entry for trial, is printed as O. 36, r. 22B.

O. 36, r. 13A. Rule 5, correcting O. 36, r. 13, is printed as O. 36, r. 13A.

O. 37, r. 6A. Rule 6, providing for a form of request to examine witnesses, is printed as O. 37, r. 6A.

Rules 45, 47, 48, 50, of Order XXXVII. are hereby annulled, and the following rules 7, 8, 9, 10 shall stand in lieu thereof:

O. 37, rr. 45, 47, 48, 50. Rules 7, 8, 9, and 10, relating to the examination of witnesses by an examiner, are respectively printed as rules 45, 47, 48 and 50 of O. 37.

Examiners' Fees.

Instead of the words "in London or Middlesex" in fees 1 and 5, read "within three miles from the principal entrance of the Royal Courts of Justice."

[See now as to examiners' fees R.S.C. Dec., 1885, r. 12, which is printed as O. 37, r. 51.]

O. 50, r. 1A. Rule 11, as to early trial of causes, is printed as O. 50, r. 1A.

O. 50, r. 15A. Rule 12, as to appointment of receivers by way of equitable execution, is printed as O. 50, r. 15A.

Rule 22 of Order L. is hereby annulled, and the following rule shall stand in lieu thereof:

O. 50, r. 22. The substituted rule, rule 13, as to certificate of receiver's account is printed as O. 50, r. 22.

O. 50, r. 24. Rule 14, as to passing of guardians' accounts, is printed as O. 50, r. 24.

Rule 15, as to appeals from inferior courts, is printed as O. 59, r. 7. R. S. C., Oct., 1884.
Rule 16, as to judge's notes on appeal from inferior court, is printed as O. 59, r. 8.

O. 59, r. 7.
O. 59, r. 8.

APPENDIX.

Form 1 (Order for issue of request for commission to examine witnesses), and Form 2 (Request for commission) are printed as forms Nos. 37A and 37B in Appendix K. Vol. II., Pt. I. App. K, Nos. 37A, 37B.

Form 3 (Affidavit verifying receiver's report) is printed as form No. 22 in Appendix L, Vol. II., Pt. I. App. L, No. 22.

RULES OF THE SUPREME COURT,

JULY, 1885.

NOTE.—The following rule may be cited, with reference to the Rules of the Supreme Court, 1883, as O. 42, r. 14. R. S. C., July, 1885.

This rule, which is dated 27 July, 1885, and relates to renewal of notice as to stock, is printed as O. 46, r. 14. O. 46, r. 14.

RULES OF THE SUPREME COURT,

DECEMBER, 1885.

NOTE.—The following rules may be cited as the "Rules of the Supreme Court," December, 1885, and each rule may be cited separately according to the heading thereof with reference to the Rules of the Supreme Court, 1883. They shall come into operation on the 1st of January, 1886. R. S. C., Dec., 1885.

1. Order V., rule 9 (*e*), shall be read as if the following words were added thereto :— O. 5, r. 9 (*e*).

And such certificate shall be countersigned by the Chief Clerk, to whom according to the distribution of business such cause or matter belongs.

2. For the purposes of sub-sections (*a*), (*b*), and (*c*), of this rule separate rotations shall be kept. O. 5, r. 9 (*f*).

3. Order VII., rule 3, shall be read as if the following words were added thereto :— O. 7, r. 3.

"Until the final conclusion of the cause or matter, whether in the High Court or the Court of Appeal."

R. S. C., Dec., 1885.

4. Order XIII., rule 9, shall be read as if after the words "arrears of rent" the words "double value" were inserted, and after the words "breach of contract," the words "or wrong or injury to the premises claimed" were inserted.

O. 13, r. 9.

O. 14, r. 7. Rule 5, as to disposal of action where writ specially indorsed, is printed as O. 14, r. 7.

O. 18, r. 2. 6. Order XVIII., rule 2, shall be read as if the following words were added thereto :—

The added words are printed at the end of O. 18, r. 2.

O. 27, r. 8. 7. Order XXVII., rule 8, shall be read as if after the words "breach of contract," the words "or wrong or injury to the premises claimed" were inserted.

O. 33, r. 4A. Rule 8, as to the mode of vouching accounts, is printed as O. 33, r. 4A.

O. 34, r. 3. 9. Order XXXIV., rule 3, shall be read as if the words "Printed copies for the use of the Judges shall be delivered by the plaintiff" were omitted, and the words "Three printed copies for the use of the Judges shall be left therewith" were substituted therefor.

O. 35, r. 6. 10. Order XXXV., rule 6, shall be read as if after the word "Master" the words "or Chief Clerk" were inserted.

O. 36, r. 6. 11. Order XXXVI., rule 6, shall be read as if the words "within ten days after notice of trial has been given" were therein inserted after the words "upon application."

O. 37, r. 51. Rule 12 as to fees to examiners, is printed as O. 37, r. 51.

O. 38, r. 10. 13. Order XXXVIII., rule 10, shall be read as if the words "indorsed on" were substituted for the words "appended to."

O. 38, r. 19A. Rule 14, as to verifying consent of new trustee to act, is printed as O. 38, r. 19A.

O. 49, r. 4A. Rule 15, as to power of one judge of C. D. to hear a cause or matter for another, is printed as O. 49, r. 4A.

O. 51, r. 1A. Rule 16, as to mode of carrying out sales, &c., ordered by the Court is printed as O. 51, r. 1A.

O. 51, r. 3A. Rule 17, dispensing with order for payment of purchase-money into court, is printed as O. 51, r. 3A.

O. 51, r. 6A. Rule 18, as to certificate of result of sale, is printed as O. 51, r. 6A.

O. 55, r. 1A. Rule 19, as to council in chambers, is printed as O. 55, r. 1A.

O. 55, r. 2. 20. Sub-section (6) shall be read as if the words "any other Act relating to Parliamentary deposits" were inserted before "for investment"; and sub-section (7) shall be read as if the words "passed before the 14th August, 1855," were omitted.

[The word "and" should have been inserted before the words, "any other Act," in this rule.]

O. 55, rr. 5A, 5B. Rules 21 and 22, as to originating summons for foreclosure, &c., and as to persons to be served therewith, are printed as O. 55, rr. 5A, 5B.

Rule 23, as to orders to be made on application for administration or execution of trusts, where no accounts or insufficient accounts have been rendered, is printed as O. 55, r. 10A. R. S. C., Dec., 1885. O. 55, r. 10A.

24. The proviso at the end of Order LV., rule 15, is hereby annulled, and the following proviso is substituted therefor : O. 55, r. 15.

The substituted proviso is inserted at the end of O. 55, r. 15.

Rule 25, as to power of one chief clerk to take business for another, is printed as O. 55, r. 17A. O. 55, r. 17A.

Rule 26, as to hearing of matters by chief clerks, is printed as O. 55, r. 39A. O. 55, r. 39A.

27. Order LV., rule 46, shall be read as if the words "for claimants" were inserted after the word "Advertisement." O. 55, r. 46.

Rule 28, as to preparation and signature of advertisements for creditors, is printed as O. 55, r. 46A. O. 55, r. 46A.

Rule 29, as to the preparation and settlement of the chief clerk's certificate, is printed as O. 55, r. 66A. O. 55, r. 66A.

30. Order LV., rule 74, is hereby annulled, and the following rule shall stand in lieu thereof : O. 55, r. 74.

The substituted rule is printed as O. 55, r. 74.

Rule 31, as to evidence of orders made in chambers, is printed as O. 55, r. 74A. O. 55, r. 74A.

Rule 32, as to time for appealing from order made on further consideration and summons to vary, is printed as O. 58, r. 15A. O. 58, r. 15A.

Rules 33 to 41, as to appeals from Inferior Courts to the Q. B. D., are printed as O. 59, rr. 9 to 17. O. 59, rr. 9–17.

Rule 42, as to security for costs by plaintiff temporarily within jurisdiction, is printed as O. 65, r. 6A. O. 65, r. 6A.

Rules 43 to 50, as to proceedings on taxation of costs, were printed as O. 65, rr. 19A to 19H. See R. S. C. May, 1889, r. 2 : R. S. C. June, 1889, r. 4. O. 65, rr. 19A. to 19H.

December 18, 1885.

APPENDIX.

Form 1, consent of trustee to act, is printed as Form 29 in App. L, Vol. II., Part I.

Form 2, certificate of result of sale, is printed as Form 16 in App. L, Vol. II., Part I.

List of fees to examiners is printed after O. 37, r. 51.

RULE OF THE SUPREME COURT,

JULY, 1886.

O. XXXVI., r. 22A, is hereby annulled, and the following rule shall be substituted therefor : R. S. C., July, 1886.

The substituted rule which relates to the trial of Chancery causes at Liverpool and Manchester, is printed as O. 36, r. 22A. O. 36, r. 22A.

RULES OF THE SUPREME COURT,

DECEMBER, 1886.

R. S. C., Dec., 1886.

NOTE.—The following rules may be cited as the "Rules of the Supreme Court," December, 1886, and each rule may be cited separately according to the heading thereof with reference to the Rules of the Supreme Court, 1883. They shall come into operation on the 1st of January, 1887.

O. 5, r. 9.

1. Order V., rule 9, shall be read as if the following words were added thereto :—

The added words are printed at the end of O. 5, r. 9.

O. 35, r. 6A.

Rule 2, as to duties of district registrars in actions commenced in the Chancery Division in the Liverpool and Manchester District Registries, is printed as O. 35, r. 6A.

O. 35, r. 12.

3. Order XXXV., rule 12, shall be read as if the following words were added thereto :—

The added words are printed at the end of O. 35, r. 12.

O. 65, r. 27 (48).

4. Order LXV., rule 27, Regulation (48), shall be read as if the following words were added thereto :—

The added words are printed at the end of O. 65, r. 27 (48).

RULES OF THE SUPREME COURT,

MAY, 1887.

R. S. C., May, 1887.

[*N.B.*—There is no note as to the citation of these rules as R. S. C., 1883.]

Rule 1, as to originating summonses, is printed after O. 35, r. 6A.

Rule 2, as to petitions, is printed after O. 35, r. 6A.

R. 3. Citation and commencement.

3. These rules may be cited as the "Rules of the Supreme Court, May, 1887," and shall come into operation on the sixth day of June, 1887.

May 26, 1887.

RULES OF THE SUPREME COURT,

DECEMBER, 1887.

R. S. C., Dec., 1887.

O. 61, r. 1A.

This rule, which is dated 17 Dec., 1887, effects some changes in the departments of the Central Office, and is printed as O. 61, r. 1A.

RULES OF THE SUPREME COURT,

AUGUST, 1888.

1. Order XXII., rule 17, of the Rules of the Supreme Court, 1883, is hereby annulled, and the following rule shall stand in lieu thereof:— R. S. C., Aug., 1888.

The substituted rule which relates to the investment of cash under the control of the court, is printed as O. 22, r. 17. O. 22, r. 17.

Rule 2, relating to a garnishee order against a firm, was printed as O. 45, r. 10. It was repealed by R. S. C. June, 1891, r. 4. O. 45, r. 10.

3. Order XLVI., rule 3, shall be construed and have effect as if the words "dividends thereon" were substituted for the word "money." O. 46, r. 3.

4. These rules shall come into operation on the 24th of October, 1888, and may be cited as the "Rules of the Supreme Court, August, 1888," or each rule may be cited according to the heading thereof, with reference to the Rules of the Supreme Court, 1883.

RULES OF THE SUPREME COURT,

DECEMBER, 1888.

1. Order XXXVI. Rules 45, 46, and 47 of the Rules of the Supreme Court, 1883, are hereby annulled, and the following rules 1 to 5 shall stand in lieu thereof:— R. S. C., Dec., 1888.

The substituted rules 1 to 5 are printed as O. 36, rr. 45 to 47B. O. 36, rr. 45—47B.

Rule 6, as to the direction in rule 57, is printed O. 36, r. 57A. O. 36, r. 57A.

7. Order XXXVII. Rule 39 of the Rules of the Supreme Court, 1883, is hereby annulled, and the following rule shall stand in lieu thereof:—

The "following rule" is printed as O. 37, r. 39. O. 37, r. 39.

Rule 8, as to indorsement by examiners, is printed as O. 37, r. 52. O. 37, r. 52.

9. Order LI., rule 1A, shall be read as if the following words were added thereto:—

The words added by r. 9 are printed as the proviso to O. 51, r. 1A, "Provided always," &c. O. 51, r. 1A.

Rule 10 is printed as O. 54, r. 9A. O. 54, r. 9A.

Rule 11, as to the appointment of new trustees by summons was annulled by rr. 1 and 10 of R. S. C., June, 1889, and O. 55, r. 13A, substituted for it.

Rule 12 annulled the first proviso to O. 55, r. 15, and substituted O. 55, r. 15A.

R. S. C., Dec., 1888.

O. 55. r. 15A for it. This latter r. (O. 55, r. 15A) was annulled by R. S. C. June, 1889. r. 10. and O. 15, r. 15A, as now printed, substituted for it.

O. 59, r. 8A. Rule 13, as to application for a prohibition to a County Court, is printed as O. 59. r. 8A.

O. 59, r. 18. Rule 14. as to appeals from superior court, is printed as O. 59, r. 18.

15. These rules shall come into operation on the 11th of January, 1889, and may be cited as the "Rules of the Supreme Court, December, 1888," or each rule may be cited by the heading thereof with reference to the Rules of the Supreme Court, 1883.

December 19, 1888.

RULE OF THE SUPREME COURT,

30 JANUARY, 1889.

R. S. C., Jan., 1889.

From and after the 1st day of February, 1889, all the duties and powers which by virtue of the fifth section of the Great Seal (Offices) Act, 1874, and of the Supreme Court of Judicature Acts, are, or ought upon the abolition of the office of clerk of the Petty Bag, to be performed by or vested in such Officer of the Supreme Court of Judicature in England as may be directed by Rules of Court under the Supreme Court of Judicature Act, 1873 (except such of the same duties and powers as are by the Solicitors Act, 1888, directed to be performed or exercised by the Incorporated Law Society as Registrar of Solicitors), shall be performed by and vested in the Senior Clerk for the time being of the Crown Office Department of the Central Office.

January 30, 1889.

RULE OF THE SUPREME COURT,

10 APRIL, 1889.

R. S. C., April, 1889.

We, the undersigned, being the authority having power to make Rules for Her Majesty's Court of Appeal in England, do hereby, in pursuance of the seventeenth section of the Railway and Canal Traffic Act, 1888, make the following Rule in relation to appeals from the Commissioners under that Act:—

Order LVIII. of the Rules of the Supreme Court, 1883, shall, so far as applicable, apply to all appeals from the Commissioners under the Railway and Canal Traffic Act, 1888.

Dated this 10th day of April, 1889.

RULES OF THE SUPREME COURT,

1 MAY, 1889.

R. S. C., May, 1889.

Rule 1 provides for the insertion of the words in O. 65, r. 18, which are now printed in brackets. Rule 3 of the R. S. C., June, 1889, makes the same provision. — O. 65, r. 18.

2. Rules 19B, 19C, and 19D are hereby annulled, and the following three rules are substituted therefor :—

The three rules substituted by rule 2 were printed as O. 65, rr. 19B, 19C, 19D. See R. S. C., June, 1889, rr. 4 to 6. — O. 65, rr. 19B, 19C, 19D.

3. Rule 19F is hereby annulled.

See R. S. C., June, 1889, schedule.

4. So much of regulation 27 of rule 27 as follows the word "unnecessary," is hereby annulled.

See O. 65, r. 27 (27), r. 27A, and R. S. C., June, 1889, r. 7. Rule 5 amended the provision of O. 65, r. 27, by adding Regulations 38A, 38B, which were further amended by R. S. C., 1889, rr. 8, 9. See O. 67, r. 27 (38A), (38B). — O. 65, rr. 27, 27A.

6. These rules shall come into operation on the 1st of June, 1889, and may be cited as the "Rules of the Supreme Court, May, 1889," and each rule may be cited by the heading thereof with reference to the Rules of the Supreme Court, 1883.

These rules were annulled by R. S. C., June, 1889 ; see schedule thereto.

May 1, 1889.

RULES OF THE SUPREME COURT,

JUNE, 1889.

R. S. C., June, 1889.

Rule 1, providing for the appointment of new trustees upon summons, and for vesting orders, is printed as O. 55, r. 13A. — O. 55, r. 13A.

Rule 2 is now printed as O. 55, r. 15A, the old rule having been annulled. See schedule. — O. 55, r. 15A.

Rule 3 provided for the insertion of the words after rotation, which are now printed O. 65, r. 18A. See R. S. C., May, 1889, r. 1. — O. 65, r. 18A.

Rule 4 is printed as O. 65, r. 19B, the former rule being annulled. See schedule. — O. 65, r. 19B.

Rule 5 is printed as O. 65, r. 19C. — O. 65, r. 19C.

Rule 6 is printed as O. 65, r. 19D. — O. 65, r. 19D.

7. So much of regulation 27A of rule 27 as follows the word "unnecessary," is hereby annulled. — O. 65, r. 27, Regulation 27A.

Rule 8 is printed as O. 65, r. 27, regulation 38A. — O. 65, r. 27, Regulation 38A.

Rule 9 is printed as O. 65, r. 27, regulation 38B. — O. 65, r. 27, Regulation 38B.

10. The rules mentioned in the schedule hereto are hereby annulled.

R. S. C., June, 1889.

11. These rules may be cited as the "Rules of the Supreme Court, June, 1889," and each rule may be cited by the heading thereof with reference to the Rules of the Supreme Court, 1883.

No time is fixed for the coming into operation of these rules.

June 24, 1889.

SCHEDULE.

Rules Annulled.

ORDER LV.—Rules 13A and 15A, being rules 11 and 12 of the R. S. C., December, 1888.

ORDER LXV.—Rules 19B, 19C, 19D, 19F, being rules 44, 45, 46, and 48 of the R. S. C., December, 1885.

The Rules of the Supreme Court, May, 1889.

R. S. C., Dec., 1889.

RULES OF THE SUPREME COURT,

DECEMBER, 1889.

Repeal of O. 36, r. 10.

1. Order XXXVI., rule 10, is hereby repealed.

O. 36, r. 52A. Rule 2 is now printed as O. 36, r. 52A.
O. 36, r. 55A. Rule 3 is now printed as O. 36, r. 55A.
O. 36, r. 55B. Rule 4 is now printed as O. 36, r. 55B.
O. 36, r. 55C. Rule 5 is now printed as O. 36, r. 55C.
O. 40, r. 6*a*. Rule 6 is now printed as O. 40, r. 6*a*.
O 42, r. 31*a*. Rule 7 is now printed as O. 42, r. 31*a*.
O. 54, r. 12*a*. Rule 8 is now printed as O. 54, r. 12*a*.
O. 57, r. 16. Rule 9 is now printed as O. 57, r. 16.
O. 57, r. 17. Rule 10 is now printed as O. 57, r. 17.

11. In rule 15 of Order LXI. the words "and no order to make a submission to arbitration, or an award, an order of the Court," and the words "submission to arbitration or award" are repealed.

O. 61, r. 15*a*. Rule 11 amends O. 61, r. 15. It is printed as O. 61, r. 15*a*.
O. 64, r. 14*a*. Rule 12 is printed as O. 64, r. 14*a*.

Operation.

13. These rules shall come into operation on the 1st of January, 1890, and may be cited as the "Rules of the Supreme Court, December, 1889," or may be cited according to the heading thereof, with reference to the Rules of the Supreme Court, 1883.

December 9, 1889.

APPENDIX.

[NOTE.—Forms 1 and 2 are in substitution for Forms 32 and 33 in Appendix K., and Forms 3 and 4 are in addition to the Forms in Appendix B.]

See Vol. II., Pt. I.

RULE OF THE SUPREME COURT,

AUGUST, 1890.

R. S. C., Aug., 1890.

This rule is now printed under O. 39, r. 1, with the words added by O. 39, r. 1A, R. S. C., Feb. 1892, r. 2, *infra*.

See J. A., 1890, *ante*.

RULES OF THE SUPREME COURT,

JUNE, 1891.

R. S. C., June, 1891.

Rule 1 is printed as O. 42, r. 33A. — O. 42, r. 33A.
Rule 2 is printed as O. 46, r. 1A. — O. 46, r. 1A.
Rule 3 is printed as O. 46, r. 1B. — O. 46, r. 1B.

4. Order VII., Rule 2, Order IX., Rules 6 and 7, Order XII., Rules 15 and 16, Order XVI., Rules 14 and 15, Order XLII., Rule 10, and Order XLV., Rule 10, are hereby repealed, and the following Rules (1) to (11) shall stand as a separate Order in lieu thereof.

Rules (1) to (11) are printed as O. 48A. — O. 48A.

5. Order LIV., Rule 4, shall be read as if the following words were added thereto:—"Provided that in the case of summonses for time only, the summonses may be served on the day previous to the return thereof."

Rule 5 is now printed as O. 54, r. 4A. — O. 54, r. 4A.

6. These rules may be cited as the Rules of the Supreme Court, June, 1891; and each rule may be cited separately according to the heading thereof with reference to the Rules of the Supreme Court, 1883. They shall come into operation on the first day of July, 1891.

Dated the 19th day of June, 1891.

RULE OF THE SUPREME COURT,

DECEMBER, 1891.

R. S. C., Dec., 1891.

This rule is printed as O. 36, r. 29A. — O. 36, r. 29A.

This rule may be cited as the Rule of the Supreme Court, December, 1891, or as Order XXXVI., Rule 29A, with reference to the Rules of the Supreme Court, 1883.

RULES OF THE SUPREME COURT,

R. S. C., Feb., 1892.

5 FEBRUARY, 1892.

New Trials.

O. 36, r. 39. 1. This rule annulled O. 36, r. 39, and substituted for it the rule now printed in its place.

O. 39, r. 1A. Rule 2 amends R. S. C. Aug., 1890. The rule as amended will be found under O. 39, r. 1A.

O. 39, r. 4A. 3. Order XXXIX., Rule 4, shall be read as if the notice of motion mentioned therein were a 14 days' notice instead of an 8 days' notice.

This rule is printed as O. 39, r. 4A.

O. 40, r. 2. 4. Order XL., Rule 2, is hereby annulled, and the following Rule shall be substituted therefor :—

Every referee to whom a cause or matter shall be referred for trial shall direct how judgment shall be entered, and such judgment shall be entered accordingly by a Master or Registrar as the case may be.

This rule is printed as O. 40, r. 2.

O. 40, r. 5A. 5. In Order XL., Rule 5, the words from "unless" to the end of the Rule are hereby annulled.

This rule, as amended, is printed as O. 40, r. 5A.

O. 59, r. 1 (J). 6. Order LIX., Rule 1 (J), is hereby annulled.

7. These Rules shall come into operation on the first day of March, 1892. They may be cited as the Rules of the Supreme Court, February, 1892; and each Rule may be cited according to the heading thereof with reference to the Rules of the Supreme Court, 1883.

Dated the 5th day of February, 1892.

RULES OF THE SUPREME COURT,

R. S. C., Aug., 1892.

AUGUST, 1892.

Rule 1 is printed as O. 36, r. 29B.

O. 36, r. 29B.
O. 55, r. 6A. 2. The following form shall be substituted for Form 9 in Appendix L.

The form prescribed is printed as Form 9, Appendix L., Vol. II., Pt. I.

3. These rules (which may be cited as "Rules of the Supreme Court, August, 1892") shall come into operation on the 1st of October next.

The 10th of August, 1892.

RULE OF THE SUPREME COURT,

R. S. C., Aug., 1893.

AUGUST, 1893.

O. 36, r. 18 (A). This Rule is printed as O. 36, r. 18 (A), 23rd August, 1893.

RULES OF THE SUPREME COURT,

28 NOVEMBER, 1893.

R. S. C., Nov., 1893.

1. Order XI. This order was substituted for Order 11 of R. S. C., 1883, repealed by r. 31, *infra*. It extended the provisions as to service out of the jurisdiction to process other than writs of summons. The whole order was annulled by R. S. C., 10 Jan., 1894, *infra*, and Order 11 of R. S. C., 1883, restored. — O. 11.

2. Order XIII., r. 15. — O. 13, r. 15.

This rule is printed as O. 13, r. 15.

3. Order XIV. This order was substituted for O. 14 of R. S. C., 1883, repealed by r. 31, *infra*. — O. 14.

Sub-rule (1) is printed as O. 14, r. 1 (a) and (b): sub-rule (2) as O. 14, r. 2; sub-rule (3) as O. 14, r. 3 (a), (b), (c); sub-rule (4) as O. 14, r. 4: sub-rule (5) as O. 14, r. 5; sub-rule (6) as O. 14, r. 6: sub-rule (7) as O. 14, r. 7; sub-rule (8) as O. 14, r. 8 (a), (b): sub-rule (9) as O. 14, r. 9 (a), (b).

Rule 4 amends O. 16, r. 8. — O. 16, r. 8

5. Order XVI., Rule 9A. — O. 16, r. 9A.

This rule is printed as O. 16, r. 9A.

Rule 6 amends O. 16, r. 32. — O. 16, r. 32.
Rule 7 amends O. 16, r. 40. — O. 16, r. 40.

8. Order XVIIIA. Trial without pleadings. — O. 18A.

This rule is printed as O. 18A.

9. This Rule is printed as O. 22, r. 22. — O. 22, r. 22.

10. Order XXX. This order was substituted for O. 30 of R. S. C., 1883, repealed by r. 31, *infra*. — O. 30.

Sub-rule (1) is printed as O. 30, r. 1; sub-rule (2) as O. 30, r. 2; sub-rule (3) as O. 30, r. 3; sub-rule (4) as O. 30, r. 4; sub-rule (5) as O. 30, r. 5; sub-rule (6) as O. 30, r. 6.

11. Order XXXI., Rule 1, substituted for O. 31, r. 1, of R. S. C., 1883, repealed. — O. 31, r. 1.

12. Order XXXI., Rule 2, substituted for O. 31, r. 2, of R. S. C., 1883, repealed. — O. 31, r. 2.

13. Order XXXI., Rule 12, substituted for O. 31, r. 12, of R. S. C., 1883, repealed. — O. 31, r. 12.

14. Order XXXI., Rule 18, substituted for O. 31, r. 18, of R. S. C., 1883, repealed. — O. 31, r. 18.

This rule is printed as O. 31, r. 18 (1), (2).

15. Order XXXI., Rule 19A. — O. 31, r. 19A.

This rule is printed as O. 31, r. 19A, (1), (2), (3).

R. S. C., Nov., 1893.

16. Extends the application of O. 31, r. 29, to infant plaintiffs and defendants and their next friends and guardians *ad litem*.

O. 31, r. 29. This rule is printed after O. 31, r. 29.

O. 33, r. 8A. 17. Order XXXIII., Rule 8A.

This rule is printed as O. 33, r. 8A.

O. 51, r. 1B. 18. Order LI., Rule 1B.

This rule is printed as O. 51, r. 1B.

O. 54, r. 4B. 19. Order LIV., Rule 4B.

This rule is printed as O. 54, r. 4B.

O. 54, r. 4C. 20. Order LIV., Rule 4C.

This rule is printed as O. 54, r. 4C.

O. 54, r. 4D. 21. Order LIV., Rule 4D.

This rule is printed as O. 54, r. 4D.

O. 54, r. 4E. 22. Order LIV., Rule 4E.

This rule is printed as O. 54, r. 4E.

O. 54A. 23. Order LIVA.

Sub-rule (1) is printed as O. 54, r. 1; sub-rule (2) as O. 54, r. 2; sub-rule (3) as O. 54, r. 3; sub-rule (4) as O. 54, r. 4.

O. 55, r. 9A. 24. Order LV., Rule 9A.

This rule is printed as O. 55, r. 9A.

O. 55, r. 10A. Rule 25 amends O. 55, r. 10A.

O. 55, r. 35A. 26. Order LV., Rule 35A.

This rule is printed as O. 55, r. 35A.

O. 58, r. 15. Rule 27 amends O. 58, r. 15, by substituting "fourteen" for "twenty-one" and "three months" for "one year."

O. 65, r. 14A. 28. Order LXV., Rule 14A.

This rule is printed as O. 55, r. 14A.

O. 65, r. 14B. 29. Order LXV., Rule 14B.

This rule is printed as O. 65, r. 14B.

O. 65, r. 14C. 30. Order LXV., Rule 14C.

This rule is printed as O. 65, r. 14C.

31. The following Orders, Rules, and Forms are hereby annulled:—

Order XI. (This annulment was annulled by R. S. C., 10 Jan., 1894, *infra*.)
Order XIV.
Order XXX.
Order XXXI., Rules 1, 2, 12, 18.
Order LIV., Rules 4, 4A, 12 (e).
Order LV., Rules 20, 21, 22, 23.
Appendix K., Forms Nos. 3, 4.
Appendix L., Form No. 25.

32. These Rules may be cited as Rules of the Supreme Court, November, 1893, and each Rule may be cited separately according to the heading thereof with reference to the Rules of the Supreme Court, 1883. They shall come into operation on the 1st day of January, 1894. R. S. C., Nov., 1893.

FORMS (see Vol. II., Pt. I.).

Appendix B., No. 16A (Notice of Trial without Pleadings).
Appendix K., No. 1A (General Form of Originating Summons).
Appendix K., No. 1B (Originating Summons not Inter Partes).
Appendix K., Nos. 1C, 1D, 1E. These forms were annulled by R. S. C., 10 Jan., 1894, *infra*.
Appendix K., No. 1F (Notice of Appointment to hear Originating Summons).
Appendix K., No. 3A (Summons for Directions).
Appendix K., No. 4A (Order for Directions pursuant to Order XXX.).

RULES OF THE SUPREME COURT (TRUSTEE ACT), 1893,

5 DECEMBER, 1893.

R. S. C., Dec., 1893.

Order LIVB.

Rule 1 is printed as O. 54B, r. 1. — O. 54B, r. 1.
Rule 2 is printed as O. 54B, r. 2. — O. 54B, r. 2.
Rule 3 is printed as O. 54B, r. 3. — O. 54B, r. 3.
Rule 4 is printed as O. 54B, r. 4. — O. 54B, r. 4.

5. Order LV., Rule 13A, is hereby repealed and the following rule shall be substituted therefor :—

This rule is printed as O. 55, r. 13A. — O. 55, r. 13A.

6. The following Rules are hereby repealed :—

Order LII., Rules 19, 20, 21, 22.
Order LV., Rule 2 (4), (5), (8).
Chancery Funds Amended Orders, 1874. Orders 5, 6, 7, 8, 9, and 10.

7. These Rules may be cited as the "Rules of the Supreme Court (Trustee Act), 1893," and each Rule may be cited separately according to the heading thereof with reference to the Rules of the Supreme Court, 1883. They shall come into operation on the 1st day of January, 1894.

RULE OF THE SUPREME COURT,

20 DECEMBER, 1893.

R. S. C., Dec., 1893.

This Rule is printed as O. 59, r. 4A. — O. 59, r. 4A.

RULE OF THE SUPREME COURT,

10 JANUARY, 1894.

R. S. C., Jan., 1894.

Rules 1 and 7 of the Rules of the Supreme Court, November, 1893 (Order XI., Service out of the Jurisdiction, and Order XVI., Rule 40), and so much of Rule 31 as annuls Order XI. of the Rules of the Supreme Court, 1883, and also Forms No. 1, C., D., and E. of Appendix K. of the Rules of November, 1893, are hereby annulled; and whereas the immediate operation of this Rule is urgent, this Rule shall come into operation forthwith.

RULES OF THE SUPREME COURT,

18 AUGUST, 1894.

R. S. C., Aug., 1894.

O. 30, r. 7. 1. Order XXX., r. 7.

This rule is printed as O. 30, r. 7.

O. 35, r. 5A. 2. Amends O. 35, r. 5, by bringing the making of Interpleader Orders within the jurisdiction of district registrars.

This rule is printed as O. 35, r. 5A.

O. 54, r 4B. 3. Order LIV., r. 4B.

This rule is printed as O. 54, r. 4B. in lieu of O. 54, r. 4B. of R. S. C., 28 Nov., 1893, repealed by these rules (see *infra*).

O. 54, r. 4C. 4. Order LIV., r. 4C.

This rule is printed as O. 54, r. 4C, in lieu of O. 54, r. 4C. of R. S. C. 28 Nov., 1893, repealed by these rules.

O. 54, r. 4D. 5. Order LIV., r. 4D.

This rule is printed as O. 54, r. 4D, in lieu of O. 54, r. 4D, of R. S. C., 28th Nov., 1893, repealed by these rules.

O. 54, r. 4E. 6. Order LIV., r. 4E.

This rule is printed as O. 54, r. 4E. in lieu of O. 54, r. 4E. of R. S. C., 28 Nov., 1893, repealed by these rules.

O. 54, r. 4F. 7. Order LIV., r. 4F.

This rule is printed as O. 54, r. 4F.

O. 54, r. 23. 8. Order LIV., r. 23.

This rule is printed as O. 54, r. 23, in substitution for O. 54, r. 23, of R. S. C., 1883, repealed by these rules.

O. 54, r. 24. 9. Order LIV., r. 24.

This rule is printed as O. 54, r. 24, in substitution for O. 54, r. 24, of R. S. C., 1883, repealed by these rules.

O. 62, r. 2. 10. Order LXII., r. 2.

This rule is printed as O. 62, r. 2, sub-rules (1), (2), (3), (4), (5), (6).

R. S. C., August, 1894.

11. Order LXXI., r. 1A. This rule, defining an originating summons, is printed as O. 71, r. 1A.

O. 71, r. 1A.

12. The following Rules of the Supreme Court, 1883, are hereby annulled :—

Order LIV., Rule 4B, C, D, E, and Rules 23 and 24.
Order LXII., Rules 2 and 3.
Order LXXI. so far as it provides that an originating summons means a summons by which proceedings are commenced without writ.

13. These Rules may be cited as the "Rules of the Supreme Court, August, 1894," and each Rule may be cited separately by the heading thereof with reference to the Rules of the Supreme Court, 1883. They shall come into operation on the 24th of October, 1894.

FORMS (see Vol. II., Pt. I.).

Appendix K., No. 1G (Originating Summons under O. 54, r. 4F).
Appendix K., No. 1H (*Ex parte* Originating Summons).

RULE OF THE SUPREME COURT,

10 DECEMBER, 1894.

R. S. C., Dec., 1894.

This Rule, regulating procedure under sect. 70 of the Local Government Act, 1894, will be found printed in Pt. IV., *ante*.

The Rule came into operation on 1st January, 1895.

RULES OF THE SUPREME COURT,

25 FEBRUARY, 1895.

R. S. C., Feb., 1895.

PART I.—APPEALS UNDER THE FINANCE ACT, 1894, SECTION 10.

These Rules are printed in Pt. IV., *ante*.

PART II.—ELECTION PETITIONS UNDER THE LOCAL GOVERNMENT ACT, 1894.

(Applies the Rules of 1883 as to trial of parliamentary election petitions to elections under the Local Government Act, 1894.)
This Rule is printed in Pt. IV., *ante*.

PART III.—COSTS OF ORIGINATING SUMMONS.

The following additions to Appendix N. of the Rules of the Supreme Court, 1883, shall be made :—

R. S. C., Feb., 1895.

72A. (Instructions.) For statement of facts, such fee may be allowed as the Taxing Officer shall think fit, having regard to all the circumstances of the case.

82A. (Instructions.) For brief on hearing of an originating summons, or hearing of a summons under section 10 of the Companies (Winding-up) Act, 1890 :—Lower scale, 1*l.* 1*s.*; higher scale, 2*l.* 2*s.*

130. (Perusal.) After "of special case" insert "or statement of facts."

These additional costs will be found in their places in Appendix N., Pt. I., *ante*.

PART IV.—CHANCERY FUNDS ORDERS, CONSOLIDATION.

1. The Chancery Funds Amended Orders, 1874 (except so far as they revoke or abrogate any previous Order) and Order XXII. Rule 12, are hereby revoked. Each of the following Rules may be cited according to the heading thereof with reference to the Rules of the Supreme Court, 1883.

(The Supreme Court Funds Rules, 1894, consolidating and amending previous rules and general orders prescribing the mode of dealing with funds in court, will be found *ante*, Pt. III.)

O. 22, r. 12. 2. Order XXII., rule 12.

This rule is printed as O. 22, r. 12.

O. 22, r. 12A. 3. Order XXII., rule 12A.

This rule is printed as O. 22, r. 12A.

O. 22, r. 12B. 4. Order XXII., rule 12B.

This rule is printed as O. 22, r. 12B.

O. 54B, r. 4A. 5. Order LIVB., rule 4A.

This rule is printed as O. 54B, r. 4A.

O. 55, r. 13A. 6. Order LV., rule 13A.

This rule is printed as O. 55, r. 13A.

O. 61, r. 19. 7. In Order LXI., Rule 19, after the word "petition" insert the word "affidavit," and after the word "presented" the word "filed," and add at the end "or a note indicating that the cause was commenced prior to 2nd November, 1852, and the correctness of such reference to the record may be required to be authenticated by the seal of the Central Office."

O. 61, r. 30. 8. Add at the end of the Rule "but no effects of the suitors consisting of jewels or plate or other articles of a like nature or negotiable securities are to be so deposited."

RULES OF THE SUPREME COURT,

26 NOVEMBER, 1895.

R. S. C., Nov., 1895.

1. Order LIV., r. 12 (*m*). O. 54, r. 12 (*m*)

Amends O. 54, r. 12, by adding to the matters removed from the jurisdiction of a master, registrar, or chief clerk applications to dispense with the concurrence of a husband in a disposition by a married woman.

2. Order LIV., r. 12B. O. 54, r. 12B.

This rule is printed as O. 54, r. 12B.

3. Order LV., r. 9C. O. 55, r. 9C.

This rule is printed as O. 55, r. 9C.

4. These Rules may be cited as the "Rules of the Supreme Court (November), 1895," or each Rule may be cited by the heading thereof with reference to the Rules of the Supreme Court, 1883. They shall come into operation on the 1st of February, 1896.

RULES OF THE SUPREME COURT,

13 MAY, 1896.

R. S. C., May, 1896.

1. Order XLII., r. 33B. O. 42, r. 33B.

This rule is printed as O. 42, r. 33B.

2. Order LVII., r. 2 (*c*). O. 57, r. 2 (*c*)

This rule is printed as O. 57, r. 2 (*c*).

3. Order LVII., r. 16A. O. 57, r. 16A.

This rule is printed as O. 57, r. 16A.

4. These Rules may be cited as the "Rules of the Supreme Court (March), 1896," and each Rule may be cited separately by the heading thereof with reference to the Rules of the Supreme Court, 1883; they shall come into operation on the 1st day of June, 1896.

These Rules are dated 13 May, 1896.

RULES OF THE SUPREME COURT (LIFE ASSURANCE COMPANIES), 1896.

R. S. C., July, 1896.

29 JULY, 1896.

These Rules are now superseded by R. S. C. (Life Assurance Companies), 26 October, 1896, *infra*.

Rule 8 provides that they shall come into operation on 1st August, 1896.

9. These Rules may be cited as the Rules of the Supreme Court (Life Assurance Companies), 1896.

Signed and certified to be urgent, 29 July, 1896.

SUPREME COURT FUNDS RULE,

Funds Rule.

10 AUGUST, 1896.

This Rule is printed as Supreme Court Funds Rule, 1894, r. 41A, *ante*, Pt. III.

RULE OF THE SUPREME COURT,

26 OCTOBER, 1896.

O. 16, r. 1.

Amends O. 16, r. 1.

RULES OF THE SUPREME COURT (LIFE ASSURANCE COMPANIES), 1896.

26 OCTOBER, 1896.

These Rules were issued on 26 October, 1896, in substitution for Rules of the Supreme Court (Life Assurance Companies), 29 July, 1896, issued as urgent Rules (see *supra*).

O. 54c.

These Rules are printed as O. 54c.

Rule 8 provides that they shall come into operation forthwith.

RULE OF THE SUPREME COURT,

12 MAY, 1897.

R. S. C., May, 1897.

This Rule annuls O. 30, r. 1, of R. S. C., November, 1893, and provides that the substituted Rule shall come into operation on 25 October, 1897.

The substituted Rule which, with certain exceptions, makes an application for directions compulsory after appearance, is printed as O. 30, r. 1. O. 30, r. 1.

RULES OF THE SUPREME COURT,

4 AUGUST, 1897.

(Rule to come into operation 24 October, 1897.)

[NOTE.—*Semble*, the date, "24 October," should be 25 October.]

R. S. C. Aug., 1897.

These Rules are not numbered except in relation to R. S. C., 1883.

The first adds to O. 30, r. 1 (*b*), of R. S. C., 12 May, 1897 (*supra*), the words "or to enter judgment in default of defence under O. 27, r. 2." O. 30, r. 1.

[NOTE.—In the draft publication of the Rule the words "default of appearance" were printed by mistake for "default of defence."]

The second is printed as O. 30, r. 8. O. 30, r. 8.

RULES OF THE SUPREME COURT,

4 AUGUST, 1897.

R. S. C., August, 1897.

These Rules repeal O. 64, rr. 4 and 5, and substitute two new rules allowing pleadings to be delivered in certain cases in the Long Vacation, after 30 September.

These Rules are printed as O. 54, rr. 4, 5. O. 54, rr. 4 and 5.

RULES OF THE SUPREME COURT, AUGUST, 1898.

O. 19, r. 28.

1. Order XIX., r. 28.

The particulars prescribed in Order 19, r. 28, shall include the following :—

(*o*) What sound signals (if any), and when were given.

(*p*) What sound signals (if any), and when were heard from the other vessel.

This rule is printed as part of O. 19, r. 28.

O. 21, r. 18.

2. Order XXI., r. 18.

All the words after "at liberty to do so" in Order 21, r. 18, are hereby repealed, and the following words shall stand in lieu thereof :—

"And shall not in any event be liable to pay the costs of the other side unless the Judge shall be of opinion that there was no reasonable ground for opposing the will."

This rule is printed as part of O. 21, r. 18.

O. 54, r. 1A.

3. Order LIV., r. 1A.

This rule is printed as O. 54, r. 1 A.

O. 58, r. 20.

4. Order LVIII., r. 20 (Appeals under Workmen's Compensation Act, 1897).

This rule is printed as O. 58, r. 20.

5. These Rules may be cited as the Rules of the Supreme Court, August, 1898, or separately according to their respective headings, with reference to the Rules of the Supreme Court, 1883, and they shall come into operation on the 24th October, 1898.

15 August, 1898.

RULES OF THE SUPREME COURT, AUGUST, 18

1. Order XXII., r 17. O. 22, r. 17.

After "3 per cent. Metropolitan Consolidated Stock," add "inscribed $2\frac{1}{2}$ per cent. Debenture Stock issued by the Corporation of London, and secured by a trust deed dated the 24 of June, 1897."

This rule is printed as part of O. 22, r. 17.

2. Order LII., r. 24. O. 52, r. 24.

This rule is printed as O. 52, r. 24.

3. Order LV., r. 4A. O. 55, r. 4A.

This rule is printed as O. 55. r. 4A.

4. Order LXV., Appendix N. Appendix N. item, 136A.

After item 136. add "Of a petition in a pending cause or matter by the solicitor of the party to whom the same is delivered, such sum (if any) as the Taxing Master may in his discretion think reasonable."

This rule is printed as Appendix N., No. 136A.

5. These Rules, which shall come into operation on the 24th October, 1899, may be cited as the Rules of the Supreme Court (August) 1899, and each Rule may be cited separately by the heading thereof, with reference to the Rules of the Supreme Court, 1883.

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THE END.

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